UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C. 20240

Secretary of the Interior Cecil D. Andrus

Office of Hearings and Appeals -- Ruth R. Banks, Director

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INDEX-DIGEST

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SYMBOLS USED IN DECISIONS AND OPINIONS

ANCAB - Alaska Native Claims Appeal Board
D - Ad Hoc Appeals
IA-T - Indian Appeals -- Tort
IBCA - Interior Board of Contract Appeals
IBIA - Interior Board of Indian Appeals
IBLA - Interior Board of Land Appeals
IBMA - Interior Board of Mine Operations Appeals
IBSMA - Interior Board of Surface Mining & Reclamation Appeals
M - Solicitor's Opinion
OHA - Office of Hearings and Appeals
SEC - Office of the Secretary

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Layne and Bowler Export Corp., IBCA-245 (Jan. 18, 1961); 68 I.D. 33, overruled, insofar as it conflicts with Schweigert, Inc. *v.* United States, Ct. Cl. No. 26-66 (Dec. 15, 1967), and Galland-Henning Manufacturing Co., IBCA-534-12-65 (Mar. 29, 1968).

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Sam Bergesen v. U.S., Civil No. 2044 D. Wash. Complaint dismissed Mar. 11, 1958; no appeal.

Estate of William Bigheart, Jr., IA-T-21 (Aug. 8, 1969), IA-T-21 (Supp.) (Sept. 4, 1969)

Velma Rose Bigheart, Surviving Spouse of William Bigheart, Jr., Deceased Unallotted Osage Indian v. John Pappan, Supt., Osage Indian Agency et al., Civil No. 69-C-303, D. Okla. Order to Stay Proceedings issued May 15, 1970; amendment to complaint filed Dec. 17, 1971; judgment for defendant, July 31, 1972; reconsideration denied, Aug. 23, 1972; aff'd, 482 F.2d 1066 (10th Cir. 1973); cert. denied, 416 U.S. 937 (1974); rehearing denied, 417 U.S. 977 (1974).

Bishop Coal Co., 82 I.D. 553 (1975)

William Bennett, Paul F. Goad & United Mine Workers v. Thomas S. Kleppe, Secretary of the Interior, No. 75-2158, United States Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Anthony Bitseedy, 5 IBIA 270 (1976)

Ruby Dawson, Guardian ad litem of Anthony Bitseedy, Jr. & Sara Mingus Bitseedy, Mother of Anthony Bitseedy, Jr. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-0237, D. Okla. Judgment for defendant, Oct. 27, 1977.

BLM-A-045569, 70 I.D 231 (1963)

New York State Natural Gas Corp. v. Stewart L. Udall, Civil No. 2109-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; Per curiam decision, aff'd, Apr. 28, 1966; no petition.

Estate of Harold Russell Bobb, 5 IBIA 92 (1976)

Wilson Bobb, Sr. v. U.S. & Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-314, S.D. Wash. Suit pending.

F. W. C. Boesche, A-27997 (Aug. 5, 1959)

Fenelon Boesche v. Fred A. Seaton, Civil No. 2463-59. Judgment for defendant, Nov. 23, 1960 (opinion); aff'd, 303 F.2d 204 (1961); cert. granted, 371 U.S. 886 (1962); aff'd, 373 U.S. 472 (1963).

Irving B. Brick, 36 IBLA 235 (1978)

Irving B. Brick v. Cecil D. Andrus, Civil No. 78-1814. Judgment for defendant, June 8, 1979; rev'd & remanded to Secretary with instructions, June 6, 1980.

Brookhaven Oil Co., A-27459 (July 29, 1957)

Brookhaven Oil Co. v. Fred A. Seaton, Civil No. 2120-57. Judgment for plaintiff, Oct. 1, 1958; no appeal.

Jessie A. Brown, 23 IBLA 23 (1975), On Reconsideration, 28 IBLA 339 (1977)

Jessie A. Brown & W. L. Tallon, Jr. v. Cecil D. Andrus, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management & Ben F. Collins, Civil No. F-77-128-Civ, D. Cal. Remanded to the Department, June 29, 1979; no appeal.

Melvin A. Brown, 69 I.D. 131 (1962)

Melvin A. Brown v. Stewart L. Udall, Civil No. 3352-62. Judgment for defendant, Sept. 17, 1963; rev'd, 335 F.2d 706 (1964); no petition.

R. C. Buch, 75 I.D. 140 (1968)

R. C. Buch v. Stewart L. Udall, Civil No. 68-1358-PH, C.D. Cal. Judgment for plaintiff, 298 F. Supp. 381 (1969); rev'd, 449 F.2d 600 (9th Cir. 1971); judgment for defendant, Mar. 10, 1972.

Buell Brothers, A-30679 (Mar. 29, 1967)

U.S. v. Carl M. Buell & Lloyd F. Buell, d/b/a Buell Bros., U.S. Atty. No. N-371. Compromised, Oct. 23, 1968.

Evelyn M. Bunch, 25 IBLA 44 (1976)

Evelyn M. Bunch v. Thomas Kleppe, Secretary of the Interior, Civil No. A76-115 CIV, D. Alaska. Suit pending.

Bureau of Land Management v. Holland Livestock Ranch, et al., 39 IBLA 272; 86 I.D. 133 (1979)

Holland Livestock Ranch, a Co-Partnership composed of Bright-Holland Co., Marimont-Holland Co. & Nemmeroff-Holland Co. and John J. Casey v. U.S., Cecil Andrus, Secretary of the Interior, Edward Roland, Cal. State Director, BLM, & Edward Hastey, Nev. State Director, BLM, et al., Civil No. R-79-78-HEC, D. Nev. Suit pending.

Bureau of Land Management, Appellant, Diamond Ring Ranch, Appellee & Bureau of Sport Fisheries & Wildlife, Amicus Curiae, 12 IBLA 358 (1973)

Diamond Ring Ranch, Inc. v. Rogers C. B. Morton, Secretary of the Interior, & Daniel P. Baker, State Dir., Bureau of Land Management for the State of Wyoming, Civil No. 5934, D. Wyo. Judgment for plaintiff, Dec. 20, 1974.

C. Burglin et al., 21 IBLA 234 (1975)

C. Burglin, A. E. Greig, Owen Jennings, Wallace F. Burnett, Jr., Alexander Miller, Charles Stack, Dora Alice Carter, Earnest G. Carter, Howard Bowen, and Evelyn Franich v. The Secretary of the Interior, Thomas Kleppe et al., Civil No. A75-232 CIV, D. Alas. Consolidated with C. Burglin et al. v. Thomas Kleppe, Civil No. A75-113.

Bushman Construction Co., IBCA-103 (Mar. 29, 1957)

Bushman Construction Co. v. U.S., Ct. Cl. No. 437-57. Petition dismissed, 164 F. Supp. 239 (1958).

Administrative Appeal of Norman R. Byrd v. Commr, Bureau of Indian Affairs, 7 IBIA 142 (1979)

Norman R. Byrd v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. C-79-229, E.D. Wash. Suit pending.

Cabax Mills, 32 IBLA 225 (1977)

BPS Associates, a Joint Venture composed of Black Investment Properties, Inc., CPC Plants Corp. & Triple S. Enterprises, Inc. v. U.S. & Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-845, D. Ore. Suit pending.

Zelph S. Calder, A-30039 (Sept. 18, 1963)

Zelph S. Calder v. Stewart L. Udall, Civil No. C-219-63, D. Utah. Judgment for defendant, Aug. 10, 1964; no appeal.

California Ass'n of Four-Wheel Drive Clubs, et al., 38 IBLA 361 (1978)

California Ass'n of 4WD Clubs, Inc., & California Off-Road Vehicle Ass'n, Inc. v. Cecil Andrus, Secretary of the Interior & James B. Ruche, State Director, Cal. State Office of BLM, Civil No. 79-1797-N, S.D. Cal. Suit pending.

The California Co., 66 I.D. 54 (1959)

The California Co. v. Stewart L. Udall, Civil No. 980-59. Judgment for defendant, 187 F. Supp. 445 (1960); aff'd, 296 F.2d 384 (1961).

State of California et al. v. Doria Mining and Engineering Corp. et al., U.S., Intervenor, 17 IBLA 390 (1974)

Doria Mining and Engineering Corp. v. Rogers Morton, Secretary of the Interior, et al., Civil No. CV 75-899-FW, C.D. Cal. Judgment for defendant, 420 F. Supp. 837 (1976); appeal filed Nov. 23, 1976.

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (1979)

California Portland Cement Co. v. Cecil D. Andrus, et al., Civil No. C-79-0477, D. Utah. Suit pending.

Western Slope Carbon, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-79-350, C.D. Utah. Suit pending.

Rosebud Coal Sales Co. v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Marla B. Bohl, Chief, Land & Mining, BLM, Wyo. State Office, Civil No. C79-160, D. Wyo. Suit pending.

In the Matter of Cameron Parish, Louisiana, Cameron Parish Police Jury & Cameron Parish School Board, June 3, 1968, appealed by Secretary July 5, 1968, 75 I.D. 289 (1968)

Cameron Parish Police Jury v. Stewart L. Udall et al., Civil No. 14,206, W.D. La. Judgment for plaintiff, 302 F. Supp. 689 (1969); order vacating prior order issued Nov. 5, 1969.

Jack D. Canon et al., 30 IBLA 112 (1977)

Jack D. & Billie B. Canon, C. Fred & Chloe Underwood, Donald W. & Susan Canon, David A. & Ann Underwood v. Cecil D. Andrus, Secretary of the Interior, Civil No. S78-51-PCW, E.D. Cal. Suit pending.

James W. Canon et al., 84 I.D. 176 (1977)

Mark B. Ringstad, William I. Waugaman, William N. Allen III, Nils Braastad, Elmer Price, Dan Ramras, & Kenneth L. Rankin v. U.S., Secretary of the Interior, & The Arctic Slope Regional Corp., Civil No. A78-32-Civ, D. Alaska. Suit pending.

Canterbury Coal Co., 83 I.D. 325 (1976)

Canterbury Coal Co. v. Thomas S. Kleppe, No. 76-2323, United States Ct. of Appeals, 3d Cir. Aff'd per curiam, June 15, 1977.

Carbon Fuel Co., 83 I.D. 39 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1208, United States Ct. of Appeals, D.C. Cir. Suit pending.

Jack E. Carl, A-27870, A-27900 (Apr. 23, 1959)

Jack E. Carl v. Fred A. Seaton, Civil No. 3069-59. Judgment for defendant, June 20, 1961; aff'd, 309 F.2d 653 (1962).

Carson Construction Co., 62 I.D. 422 (1955)

Carson Construction Co. v. U.S., Ct. Cl. No. 487-59. Judgment for plaintiff, Dec. 14, 1961; no appeal.

Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)
See William D. Sexton et al.

John Jay Casey, IBLA 74-196, Order decided, Jan. 29, 1975

John Jay Casey v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-74-153-RDF, D. Nev. Dismissed without prejudice, Dec. 23, 1974.

C. F. Lytle Co., IBCA-172 (Sept. 30, 1958)

C. F. Lytle Co. v. U.S., Ct. Cl. No. 174-59. Compromised.

Estate of George Chahesenah, IA-T-4 (June 20, 1967)

Viola Atewooftakewa (Tate) et al., v. Udall, Civil No. 67-323, W.D. Okla. Judgment for plaintiff, 277 F. Supp. 464 (1967); rev'd & remanded to dismiss for want of jurisdiction, 407 F.2d 394 (10th Cir. 1969); cert. granted, 396 U.S. 815 (1969); rev'd, 397 U.S. 598 (1970).

Evelyn Chambers, 33 IBLA 271 (1978)

Evelyn Chambers v. Cecil D. Andrus, Secretary of the Interior & Paul Howard, State Director, Bureau of Land Management, Civil No. C-78-0111, D. Utah. Settled by stipulation, Dec. 22, 1978.

Chaparral Resources, Inc., 39 IBLA 269 (1979)

Chaparral Resources, Inc. v. Cecil D. Andrus, Secretary of the Interior, C. J. Curtis, Area O&G Supervisor, Geological Survey & Glenna M. Lane, Chief, O&G Sec., Land Office, BLM, Civil No. C79-077, D. Wyo. Aff'd, Jan. 31, 1980.

Chargeability of Acreage Embraced in Oil and Gas Lease Offers, 71 I.D. 337 (1964) Shell Oil Co., A-30575 (Oct. 31, 1966)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulation of dismissal filed Aug. 19, 1968.

Chemi-Cote Perlite Corp. v. Arthur C. W. Bowen, 72 I.D. 403 (1965)

Bowen v. Chemi-Cote Perlite, No. 2 CA-Civ. 248, Ariz. Ct. App. Decision against Dept. by the lower court aff'd, 423 P.2d 104 (1967); rev'd, 432 P.2d 435 (1967).

Estate of Fannie Newrobe Choate, 7 IBIA 171 (1979)

Helen Edmo Sherman, Mary New Robe Redhead, Roy (Archie, Jr.) St. Goddard, Vincent Spotted Bear, Jack Edmo v. Cecil D. Andrus, Secretary of the Interior, Jeanette Rattler Choate Marceau, Civil No. CV-79-73-GF, D. Mont. Suit pending.

Christiansen Oil, Inc., 37 IBLA 52 (1978)

Christiansen Oil & Gas, Inc. v. Cecil D. Andrus, Secretary of the Interior & Daniel P. Baker, Wyo. State Director, Bureau of Land Management, Civil No. C78-257, D. Wyo. Suit pending.

Christy Corp., IBCA-461 & 569 (June 20, 1966)

Christy Corp. v. U.S., Ct. Cl. No. 291-66. Judgment for defendant, Harbor Boat Building Co., 387 F.2d 395 (1967); compromised, July 10, 1968.

U.S. v. Harco Engineering, A Division of Harbor Boat Building Co., Civil No. 68-827-S, D. Cal. Dismissed with prejudice, Feb. 24, 1970.

Citizens Committee to Save Our Public Lands, 29 IBLA 48 (1977)

Citizens Committee to Save our Public Lands, Hastings Environmental Law Society v. Thomas Kleppe, Secretary of the Interior, et al., Civil No. C-76032 SC, D. Cal. Suit pending.

Clark County, Nevada, 28 IBLA 210 (1976)

County of Clark, a political subdivision of the State of Nevada v. Thomas Kleppe, Secretary of the Interior & his successors in office & E. I. Rowland, Director, Bureau of Land Management for the State of Nevada & his successors in office, Civil No. LV-77-13 RDF, D. Nev. Rev'd, Jan. 18, 1978; no appeal.

Stephen H. Clarkson, 72 I.D. 138 (1965)

Stephen H. Clarkson v. U.S., Cong. Ref. 5-68. Trial Commr's report adverse to U.S. issued Dec. 16, 1970; Chief Commr's report concurring with the Trial Commr's report issued Apr. 13, 1971. P.L. 92-108 enacted accepting the Chief Commr's report.

Appeals of Ethyl D. & Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (1978)

Richard Wagner et al. v. U.S. et al., Civil No. A78-106 CIV, D. Alaska. Suit pending.

Clear Gravel Enterprises, Inc., A-27967, A-27970 (Dec. 29, 1959)

The Dredge Corp. v. E. J. Palmer, No. 366, D. Nev. Judgment for defendant, Sept. 25, 1962; remanded, 338 F.2d 456 (9th Cir. 1964); judgment for plaintiff, Aug. 8, 1966; rev'd and remanded with direction to enter judgments for defendants, 398 F.2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

Appeal of COAC, Inc., 81 I.D. 700 (1974)

COAC, Inc. v. U.S., Ct. Cl. No. 395-75. Suit pending.

P. Cobb, A-29769 (May 27, 1964)

P. and Osro Cobb v. U.S., Civil No. 967, W.D. Ark. Motion to dismiss denied, 240 F. Supp. 574 (1965); dismissed, Jan. 17, 1966.

Mrs. Hannah Cohen, 70 I.D. 188 (1963)

Hannah and Abram Cohen v. U.S., Civil No. 3158, D.R.I. Compromised.

Barney R. Colson, 70 I.D. 409 (1963)

Barney R. Colson et al. v. Stewart L. Udall, Civil No. 63-26-Civ.-Oc, M.D. Fla. Dismissed with prejudice, 278 F. Supp. 826 (1968); aff'd, 428 F.2d 1046 (5th Cir. 1970); cert. denied, 401 U.S. 911 (1971).

Barney R. Colson, 7 IBLA 40 (1972)

Barney R. Colson v. Rogers C. B. Morton, Civil No. 1960-72. Dismissed with prejudice, Feb. 7, 1974; per curiam decision, aff'd, Jan. 24, 1975; no petition.

Columbian Carbon Co., Merwin E. Liss, 63 I.D. 166 (1956)

Merwin E. Liss v. Fred A. Seaton, Civil No. 3233-56. Judgment for defendant, Jan. 9, 1958; appeal dismissed for want of prosecution, Sept. 18, 1958, D.C. Cir. No. 14,647.

Commercial Metals Co., IBCA-99 (Aug. 27, 1959)

Commercial Metals Co. v. U.S., Ct. Cl. No. 458-59. Judgment for plaintiff, June 16, 1966.

Appeal by the Confederated Salish & Kootenai Tribes of the Flathead Reservation, in the Matter of the Enrollment of Mrs. Elverna Y. Clairmont Baciarelli, 77 I.D. 116 (1970)

Elverna Yevonne Clairmont Baciarelli v. Rogers C. B. Morton, Civil No. C-70-2200 SC, D. Cal. Judgment for defendant, Aug. 27, 1971; aff'd, 481 F.2d 610 (9th Cir. 1973); no petition.

Consolidated Mines & Smelting Co. et al., A-30760 (Sept. 19, 1967)

H. D. Brown v. U.S. & Walter Hickel, Civil No. 69-2332-F, D. Cal. Dismissed with prejudice, Mar. 20, 1970; reconsideration denied, May 20, 1970.

Constitution Petroleum Co., Inc., et al., 25 IBLA 319 (1976)

Constitution Petroleum Co., Arrow Petroleum Co., & East Utah Mining Co. v. Thomas S. Kleppe et al., Civil No. C-76-257, D. Utah. Suit pending.

Appeal of Continental Oil Co., 68 I.D. 337 (1961)

Continental Oil Co. v. Stewart L. Udall et al., Civil No. 366-62. Judgment for defendant, Apr. 29, 1966; aff'd, Feb. 10, 1967; cert. denied, 389 U.S. 839 (1967).

Continental Oil Co. v. Aztec Exploration & Development Co., 32 IBLA 1 (1977)

Aztec Exploration & Development Co. v. Dept. of the Interior, Office Hearings & Appeals, Interior Board of Land Appeals & Continental Oil Co., Civil No. CIV 77-827 PHX, D. Ariz. Suit pending.

Estate of Hubert Franklin Cook, 5 IBIA 42; 83 I.D. 75 (1976)

Leroy V. & Roy H. Johnson, Marlene Johnson Exendine & Ruth Johnson Jones v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0362-E, W.D. Okla. Suit pending.

Autrice C. Copeland,
See Leslie N. Baker et al.

Copper Valley Machine Works, Inc., IBLA 78-606, Order dismissing appeal dated Dec. 13, 1978.

Copper Valley Machine Works, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-1572. Judgment for defendant, June 29, 1979, appeal filed Aug. 28, 1979.

E. L. Cord, Donald E. Wheeler, Edward D. Neuhoff, 80 I.D. 301 (1973)

Edward D. Neuhoff & E. L. Cord v. Rogers C. B. Morton, Secretary of the Interior, Civil No. R-2921, D. Nev. Dismissed, Sept. 12, 1975 (opinion); aff'd, July 17, 1978; no petition.

Jay Frederick Cornell, 4 IBLA 11 (1971)

Jay F. Cornell v. Rogers C. B. Morton, Civil No. A-5-72, D. Alaska. Judgment for defendant, Mar. 23, 1973; aff'd, Sept. 3, 1974; no petition.

William D. Cornia et al., Wyoming 4-63-1, etc., Utah 1-63-1, etc., (Aug. 25, 1965)

William D. Cornia et al. v. Stewart L. Udall, Civil No. 4-66, N.D. Utah. Dismissed with prejudice, Sept. 1, 1967.

Cortella Coal Corp. et al.,
Alaska Mineral Exploration Co., 13 IBLA 158 (1973)

Cortella Coal Corp. & Alaska Mineral Exploration Co. v. Curtis V. McVee, State Dir., Bureau of Land Management, State of Alaska, Burton W. Silcock, Dir., Bureau of Land Management & Rogers C. B. Morton, Secretary of the Interior, Civil No. A-169-73, D. Alaska. Dismissed with prejudice, Jan. 13, 1976.

Appeal of Cosmo Construction Co., 73 I.D. 229 (1966)

Cosmo Construction Co. et al. v. U.S., Ct. Cl. No. 119-68. Ct. opinion setting case for trial on the merits issued Mar. 19, 1971.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (1977)

Cotton Petroleum Corp. v. The Honorable Cecil Andrus, Secretary of the Interior, Stanley Speaks, Area Director for the Bureau of Indian Affairs, Anadarko Agency & Samedan Oil Corp., Civil No. CIV 77-0415T, D. Okla. Aff'd, Jan. 19, 1979; no appeal.

Cowin & Co., 83 I.D. 409 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1980, United States Ct. of Appeals, D.C. Cir. Suit pending.

Estate of Jonah Crosby (Deceased Wisconsin Winnebago Unallotted), 81 I.D. 279 (1974)

Robert Price v. Rogers C. B. Morton, individually & in his official capacity as Secretary of the Interior & his successors in office, et al., Civil No 74-0-189, D. Neb. Remanded to the Secretary for further administrative action, Dec. 16, 1975.

Elizabeth Barndt Crouse et al., A-30542 (Mar. 7, 1968)

Elizabeth Barndt Crouse et al v. K. Ranch, Inc., Udall, et al., Civil No. R-2063, D. Nev. Dismissed without prejudice, Apr. 15, 1969; no appeal.

Elsie May Pikok Crow, 3 IBLA 114 (1971)

Elsie May Pikok Crow v. U.S., & Rogers C. B. Morton, Civil No. F-27-71 Civ. D. Alaska. Dismissed, July 13, 1972; no appeal.

Estate of George Daniels, IA-1295 (Nov. 2, 1965)

Elizabeth Daniels et al. v. Johnson, Supt., Osage Indian Agency & Udall, Civil No. 6443, N.D. Okla. Dismissed with prejudice, Jan. 9, 1967.

Susan Dawson, 35 IBLA 123 (1978)

Susan Dawson v. Cecil Andrus, Secretary of the Interior, Civil No. C78-167, D. Wyo. Judgment for defendant, Mar. 22, 1979; appeal filed Apr. 17, 1979.

Oma Belle Day et al., AA-5702 (Dec. 30, 1969)

Oma Belle Day v. Walter J. Hickel et al., Civil No. A-9-70, D. Alas. Judgment for defendant, Feb. 19, 1971; aff'd, 481 F.2d 473 (9th Cir. 1973); no petition.

John C. deArmas, Jr., P. A. McKenna, 63 I.D. 82 (1956)

Patrick A. McKenna v. Clarence A. Davis, Civil No. 2125-56. Judgment for defendant, June 20, 1957; aff'd, 259 F.2d 780 (1958); cert. denied, 358 U.S. 835 (1958).

H. R. Delasco, 39 IBLA 194; 84 I.D. 192 (1979), Blanche V. White, 40 IBLA 152; 85 I.D. 408 (1979)

Stewart Capital Corp., et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C79-123, D. Wyo. Suit pending.

The Dredge Corp., 64 I.D. 368 (1957)
65 I.D. 336 (1958)

The Dredge Corp. v. J. Russell Penny, Civil No. 475, D. Nev. Judgment for defendant, Sept. 9, 1964; aff'd, 362 F.2d 889 (9th Cir. 1966); no petition. See also Dredge Co. v. Husite Co., 369 P.2d 676 (1962); cert. denied, 371 U.S. 821 (1962).

Alfred L. Easterday, 34 IBLA 195 (1978), Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (1978)

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior & Alfred L. Easterday, & J. Roe, Civil No. C78-104, D. Wyo.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, Alfred L. Easterday, & J. Roe, Civil No. C78-213, D. Wyo.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Wyo. State Office, Bureau of Land Management, Civil No. C78-214, D. Wyo.

Actions consolidated. Remanded to Wyo. State Office Feb. 12, 1979; order of dismissal filed Feb. 13, 1979.

Eastern Associated Coal Corp., 82 I.D. 22 (1975)

International Union of United Mine Workers of America v. Rogers C. B. Morton, Secretary of the Interior, No. 75-1107, United States Ct. of Appeals, D.C. Cir. Dismissed by stipulation, Oct. 29, 1975.

Eastern Associated Coal Corp., 82 I.D. 311 (1975)

United Mine Workers of America v. Interior Board of Mine Operations Appeals, No. 75-1727, United States Ct. of Appeals, D.C. Cir. Petition for Review withdrawn, July 28, 1975.

Eastern Associated Coal Corp., 82 I.D. 506 (1975), Reconsideration, 83 I.D. 425 (1976), Aff'd en banc, 83 I.D. 695 (1976), 7 IBMA 152 (1976)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1090, United States Ct. of Appeals, D.C. Cir. Voluntary dismissal, Apr. 4, 1977.

Lawrence Edwards, A-30696, A-30705 (Apr. 21, 1967)

Lawrence Edwards v. Stewart Udall, Civil No. 2714, D. Mont. Rev'd & remanded, Nov. 18, 1968; stipulation for dismissal & order filed Aug. 4, 1970.

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (1978)

Wesley Laverne Edwards v. U.S., Cecil Andrus, Secretary of the Interior, E. I. Rowland, Nevada State Director, Bureau of Land Management & Paul Unruh, Civil No. 77-0050 BRI, D. Nev. Judgment for defendant, Oct. 31, 1978; appeal filed Dec. 27, 1978.

Appeal of Eklutna, Inc., 1 ANCAB 165; 83 I.D. 500 (1976)

State of Alaska v. Alaska Native Claims Appeal Board et al., Civil No. A76-236, D. Alaska Suit pending.

Heldina Eluska, 21 IBLA 292 (1975)

Heldina Eluska, individ. & on behalf of all others similarly situated v. Thomas Kleppe, individ. & in his official capacity as Secretary of the Interior, Civil No. A-76-26 CIV, D. Alaska. Remanded for exhaustion of administrative remedies; reconsideration denied, Dec. 10, 1976; appeal dismissed; judgment denying plaintiffs motion for summary judgment & remanding case to Agency, Apr. 20, 1977; appeal dismissed without prejudice, Dec. 11, 1978.

Henry J. Ernst, A-27196 (Nov. 7, 1955)

Henry J. Ernst v. Secretary of the Interior, Civil No. 9303, D. Alaska. Return of service quashed & complaint dismissed, Dec. 28, 1956 (opinion); aff'd, 244 F.2d 344 (9th Cir. 1957).

David H. Evans v. Ralph C. Little, A-31044 (Apr. 10, 1970), 1 IBLA 269; 78 I.D. 47 (1971)

David H. Evans v. Rogers C. B. Morton, Civil No. 1-71-41, D. Idaho. Order granting motion of Ralph C. Little for leave to intervene as a party defendant issued June 5, 1972. Judgment for defendants, July 27, 1973; aff'd, Mar. 12, 1975; no petition.

Elsie V. Farington, 9 IBLA 191 (1973)

Elsie V. Farington v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 82768, E. D. Cal. Dismissed with prejudice, Dec. 5, 1973 (opinion); no appeal.

John J. Farrelly et al., 62 I.D. 1 (1955)

John J. Farrelly & The Fifty-One Oil Co. v. Douglas McKay, Civil No. 3037-55. Judgment for plaintiff, Oct. 11, 1955; no appeal.

Ralph G. Faulkner et al., 26 IBLA 110 (1976)

Ralph G., John L., Laura Jo, R. Fred & Susan L. Faulkner v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management, et al., Civil No. 1-77-99, D. Idaho. Judgment for defendant, Nov. 16, 1979; appeal filed Jan. 10, 1980.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39; 85 I.D. 380 (1978); On Reconsideration, 40 IBLA 222; 86 I.D. 234 (1979)

Benson J. Lamp v. Cecil Andrus, Secretary of the Interior, James L. Burski, Douglas E. Henriques & Edward W. Stuebing, Administrative Judges, IBLA, Civil No. 79-1804. Suit pending.

Chester H. Ferguson et al., 20 IBLA 224 (1975)

Chester H. Ferguson, Stella Ferguson Thayer & Howell L. Ferguson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 75-404-Civ-T-K, M.D. Fla. Dismissed without prejudice, July 16, 1975.

Administrative Appeal of Hannah Finnesand, A Native Alaska Indian v. Commissioner of Indian Affairs, 3 IBIA 263 (1975)

Hannah Finnesand and Flora Rondeau for themselves and all others similarly situated, and Flora Rondeau as next friend for Deborah Rondeau, Mitchell Rondeau & David Rondeau for themselves and all others similarly situated v. Rogers C. B. Morton et al., Civil No. A75-42, D. Alaska. Consent decree approved by the Judge.

Thomas R. Flickinger, 40 IBLA 53 (1979)
Pamela W. Kay, 40 IBLA 240 (1979
Robert B. Coen, 41 IBLA 55 (1979

Robert J. Ahrens, Harry Alatchanian, Jon Arney, Peter R. Brant, Helen D. Coen, Robert B. Coen & Jack P. Corsi, et al. v. Cecil Andrus, Secretary of the Interior, Civil No. C79-166, D. Wyo. Suit pending.

Foote Mineral Co., 34 IBLA 285; 85 I.D. 171 (1978)

Foote Mineral Co. v. Cecil D. Andrus, Individ. & as Secretary of the Interior, H. William Menard, Individ. & as Director, Geological Survey, & Murray T. Smith, Individ. & as Area Mining Supervisor, Geological Survey, Civil No. LV-78-141 RDF, D. Nev. Dismissed without prejudice Nov. 15, 1979. No appeal.

Carl E. Forsberg et al., A-29158 et al., (Aug. 19, 1963)

Carl E. Forsberg v. Stewart L. Udall, Civil No. 63-472, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Lino Land Co. v. Stewart L. Udall.

Robert K. Foster et al., A-29857 (June 15, 1964)

Robert K. Foster et al. v. Manager, Riverside Land Office, et al., Civil No. 64-1110-WM, S.D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

T. Jack Foster, 75 I.D. 81 (1968)

Gladys H. Foster, Executrix of the estate of T. Jack Foster v. Stewart L. Udall, Boyd L. Rasmussen, Civil No. 7611, D.N.M. Judgment for plaintiff, June 2, 1969; no appeal.

Franco Western Oil Co. et al., 65 I.D. 316, 427 (1958)

Raymond J. Hansen v. Fred A. Seaton, Civil No. 2810-59. Judgment for plaintiff, Aug. 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Myrtle A. Freer et al., A-29221 (Apr. 2, 1963)

Willis W. Ritter v. Rogers C. B. Morton et al., Civil No. 1-70-74, D. Idaho. Judgment for plaintiff, Nov. 14, 1972.

Fuel Resources Development Co., 43 IBLA 19 (1979)

Fuel Resources Development Co. v. Cecil D. Andrus, Secretary of the Interior, Dale R. Andrus, Director of the Colo. State Office, BLM, et al., Civil No. 79-1639, D. Colo. Suit pending.

Coral V. Funderburg, A-30514 (June 14, 1966)

Coral V. Funderburg v. Stewart L. Udall et al., Civil No. 2818 ND, S.D. Cal. Dismissed with prejudice, Feb. 15, 1967; aff'd, 396 F.2d 638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 219-61. Judgment for defendant, Dec. 1, 1961; aff'd, 315 F.2d 37 (1963); cert. denied, 375 U.S. 822 (1963).

Bernard J. & Myrle A. Gaffney, A-30327 (Oct. 28, 1965)

Bernard J. & Myrle A. Gaffney v. Stewart L. Udall, Civil No. 3-66-22, D. Minn. Stipulated dismissal without prejudice, Jan. 17, 1969; no appeal.

Estate of Temens (Timens) Vivian Gardafee, 5 IBIA 113; 83 I.D. 216 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior, & Erwin Ray, Civil No. C-76-200, E.D. Wash. Suit pending.

Stanley Garthofner, Duvall Bros., 67 I.D. 4 (1960)

Stanley Garthofner v. Stewart L. Udall, Civil No. 4194-60. Judgment for plaintiff, Nov. 27, 1961; no appeal.

Estate of Gei-kaun-mah (Bert), 82 I.D. 408 (1975)

Juanita Geikaunmah Mammedaty & Imogene Geikaumah Carter v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CIV 75-1010-E, W.D. Okla. Judgment for defendant, 412 F. Supp. 283 (1976); no appeal.

Uniform Relocation Assistance Appeal of Sidney Gelb, 2 OHA 59 (1976)

Sidney Gelb v. Thomas Kleppe, individually & officially as the Secretary of Interior, Civil No. 76-1931. Suit pending.

General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No. 170-62. Dismissed with prejudice, Dec. 16, 1963.

Nelson A. Gerttula, 64 I.D. 225 (1957)

Nelson A. Gerttula v. Stewart L. Udall, Civil No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, Aug. 3, 1961; aff'd, 309 F.2d 653 (1962); no petition.

Charles B. Gonsales, A-27944 (Apr. 22, 1959)

Charles B. Gonsales v. Frederick A. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, Jan. 12, 1962; no appeal.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., 69 I.D. 236 (1962)

Pan American Petroleum Corp. & Charles B. Gonsales v. Stewart L. Udall, Civil No. 5246, D.N.M. Judgment for defendant, June 4, 1964; aff'd, 352 F.2d 32 (10th Cir. 1965); no petition.

Charles B. Gonsales, A-29010 (Mar. 27, 1963)

Charles B. Gonsales v. Stewart L. Udall, Civil No. 5378 D.N.M. Dismissed with prejudice, Nov. 12, 1963.

John Gonzales, A-30604 (Sept. 26, 1968)

John Gonzales v. Stewart Udall, Civil No. A-128-68, D. Alas. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, Nov. 30, 1972.

James C. Goodwin, 80 I.D. 7 (1973)

James C. Goodwin v. Dale R. Andrus, State Dir., Bureau of Land Management, Burton W. Silcock, Dir., Bureau of Land Management, & Rogers C. B. Morton, Secretary of the Interior, Civil No. C-5105, D. Colo. Dismissed, Nov. 29, 1975 (opinion); Appeal dismissed, Mar. 9, 1976.

Ray Granat et al., 25 IBLA 115 (1976)

Ray Granat v. Thomas S. Kleppe & the Department of the Interior, Civil No. C 76-274, D. Utah. Suit pending.

Estate of George Green, IA-T-11 (June 7, 1968)

Lillian Crenshaw et al. v. Secretary, Civil No. 68-317, W.D. Okla. Dismissed, Feb. 4, 1969; no appeal.

LaVonne E. Grewell, 23 IBLA 190 (1976)

LaVonne V. Grewell v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C76-602V, W.D. Wash. Judgment for defendant, May 9, 1978; appeal filed July 18, 1978.

Grindstone Butte Project, 18 IBLA 16 (1974), 24 IBLA 49 (1976)

Grindstone Butte Project et al. v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director of the Bureau of Land Management, et al., Civil No. 1-76-173, D. Idaho. Judgment for plaintiff, Sept. 8, 1977; appeal filed Nov. 7, 1977.

Estate of James Growing Thunder, Fort Peck Allottee No. 2210, deceased, 3 IBIA 18 (1974)

Nancy Growing Thunder & Vernon Growing Thunder, Minors, by and through their next friend and Guardian Ad Litem, Dale Running Bear v. Rogers Morton, individually and as Secretary of the Interior, et al., Civil No. 74-73 BLG, D. Mont. Dismissed, Mar. 15, 1976.

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 2209-62. Judgment for defendant, Oct. 19, 1962; aff'd, 325 F.2d 633 (1963); no petition.

Gulf Oil Corp. et al., 21 IBLA 1 (1975)

Gulf Oil Corp. & Mobil Oil Corp. v. Stanley K. Hathaway, Secretary of the Interior, et al., Civl No. 75-2396, Section F, E.D. La. Remanded to the Secretary of the Interior for a hearing, Apr. 13, 1977.

Thomas V. Gullo & Joseph L. Randazzo, 29 IBLA 126 (1977)

Thomas V. Gullo & Joseph L. Randazzo v. Department of the Interior, Civil No. 77-0869. Aff'd Oct. 11, 1977.

Gustav Hirsch Organization, Inc., IBCA-175 (Oct. 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Guthrie Electrical Construction, 62 I.D. 280 (1955), IBCA-22 (Supp.) (Mar. 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed Sept. 11, 1958. Compromise offer accepted and case closed Oct. 10, 1958.

L. H. Hagood et al., 65 I.D. 405 (1958)

Edwin Still et al. v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

William Hall et al., A-30849, A-30852, A-30857 (Sept. 16, 1968)

William Hall & Diane Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alaska. Dismissed, July 25, 1969; no appeal.

Lester J. Hamel, A-28830 (Sept. 17, 1962)

Lester J. Hamel v. Neal D. Nelson et al., Civil No. 8565, N.D. Cal. Judgment for defendant, Dec. 13, 1963 (opinion); judgment entered Feb. 11, 1964; appeal docketed Feb. 14, 1964; dismissed by plaintiff, Mar. 20, 1964.

Raymond J. Hansen et al., 67 I.D. 362 (1960)

Raymond J. Hansen et al. v. *Stewart L. Udall*, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); *cert. denied*, 371 U.S. 901 (1962).

Robert Schulein v. *Stewart L. Udall*, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Raymond J. Hansen, A-30179 (Mar. 5, 1965)

Mary L. Brandt and Natalie Z. Shell v. *Stewart L. Udall*, Civil No. 2659-ND, S.D. Cal. Dismissed, Sept. 30, 1965; amended complaint filed Nov. 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, Nov. 1[illegible], 1967; judgment for defendants, Mar. 26, 1968; rev'd, 427 F.2d 53 (9th Cir. 1970); no petition.

Mary L. Brandt & Natalie Z. Shell v. *Stewart L. Udall*, Civil No. 2715-ND, S.D. Cal. Dismissed, Dec. 3, 1965.

Beverly Harrell, 12 IBLA 276 (1973)

Beverly Harrell v. *A. John Hillsamer, Chief of Land & Minerals Operations, Bureau of Land Management for Nevada, & E. I. Rowland, State Dir., Bureau of Land Management, Nevada*, Civil No. CIV-LV-2137, RDF, D. Nev. Dismissed, Dec. 7, 1973; motion for new trial denied, Feb. 6, 1974; no appeal.

Paul Harvey et al., A-30552 (June 24, 1966)

Paul Harvey, Grace Ernest and Lalo Enriquez v. *Stewart L. Udall*, Civil No. 6753, D.N.M. Judgment for defendant, Jan. 25, 1967; aff'd, 384 F.2d 883 (10th Cir. 1967); no petition.

Billy K. Hatfield et al. v. *Southern Ohio Coal Co.*, 82 I.D. 289 (1975)

District 6 United Mine Workers of America et al. v. *U.S. Dept. of Interior Board of Mine Operations Appeals*, No. 75-1704, U.S. Court of Appeals, D.C. Cir. Board's decision aff'd, 562 F.2d 1260 (1977).

Headwaters Association, Protestant-Appellant Cabax Mills, et al., Intervenors, IBLA 76-68, remanded to Bureau of Land Management by Order, Oct. 21, 1975; *Appeal of Harold P. Canady et al.*, IBLA 73-357, pending; *Appeal of Elizabeth Freeman*, IBLA 76-51, pending; *Appeal of Alan Troxler*, IBLA 74-215, pending; *Appeal of Alan Winter et al.*, IBLA 75-653, pending; *Appeal of Carl Wittman*, IBLA 76-14, pending.

Arthur Downing, Alan Winter, Alan Troxler and Headwaters v. *Kent Frizzell, Acting Secretary of the Interior, et al.*, Civil No. 75-1128, D. Ore. Stipulated dismissal, Dec. 30, 1976.

Thomas D. Hickey, 34 IBLA 86 (1978)

Thomas D. Hickey v. *U.S., Interior Board of Land Appeals, Cecil D. Andrus, Secretary of the Interior, & William L. Mathews, State Director (Idaho), BLM*, Civil No. CIV 78-1142, D. Idaho. Suit pending.

Jesse Higgins, Paul Gower & William Gipson v. *Old Ben Coal Corp.*, 81 I.D. 423 (1974)

Jesse Higgins et al. v. *Cecil D. Andrus*, No. 77-1363, United States Ct. of Appeals, D.C. Cir. Dismissed for lack of jurisdiction, June 20, 1977.

Hiko Bell Mining & Oil Co., 24 IBLA 255 (1976)

Hiko Bell Mining & Oil Co., a Utah Corp. v. *Thomas S. Kleppe, Secretary of the Interior*, Civil No. C 76-138, D. Utah. Judgment for plaintiff, Apr. 4, 1978.

Kenneth Holt, an individual, etc., 68 I.D. 148 (1961)

Kenneth Holt, etc. v. *U.S.*, Ct. Cl. No. 162-62. Stipulated judgment, July 2, 1965.

Hope Natural Gas Co., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. *Stewart L. Udall*, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. *Stewart L. Udall et al.*, Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; Per curiam decision, aff'd, Apr. 28, 1966; no petition.

Elbert F. Howey, 15 IBLA 208 (1974)

Elbert F. Howey v. *Rogers Morton, Secretary of the Interior*, Civil No. A74-56, D. Alaska. Dismissed with prejudice, Oct. 16, 1975 (opinion); no appeal.

Estate of Alvin Hudson, 5 IBIA 174 (1976)

David Russell Hudson v. *U.S., Thomas S. Kleppe, Secretary of the Interior, Veradine Reed Stearns, Lois Jean Reed Saxton, Mildred Reed Anderson, Ivan Stacy Reed Cleveland*, Civil No. C76-227T, W.D. Wash. Dismissed with prejudice Mar. 6, 1979; appeal filed Mar. 14, 1979.

Boyd L. Hulse v. *William H. Griggs*, 67 I.D. 212 (1960)

William H. Griggs v. *Michael T. Solan*, Civil No. 3741, D. Idaho. Stipulation for dismissal filed May 15, 1962.

Dan H. Hunter, Ray H. Albrechtsen, IBLA 70-79, 565 (Order of dismissal dated Feb. 22, 1973), reconsideration denied by Order, June 1, 1973.

Dan H. Hunter & Mountain States Resources Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-393-73, D. Utah. Judgment for Defendant, Dec. 17, 1974; aff'd, 529 F.2d 645 (10th Cir. 1976); no petition.

Ray H. Albrechtsen & Mountain States Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-392-73, D. Utah. Judgment for plaintiff, Mar. 31, 1976; rev'd & remanded with directions, 570 F.2d 906 (10th Cir. 1978); cert. denied, Oct. 2, 1978.

Stanley W. Hutchinson v. Clyde W. Bishop. A-29693 (May 4, 1964)

Clyde W. Bishop v. Stewart L. Udall, Civil No. 1-65-54, D. Idaho. Judgment for plaintiff, July 7, 1966; no appeal.

H & W Oil Co., 22 IBLA 313 (1975)

H & W Oil Co. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. 763016, E.D. Ill. Judgment for defendant, Nov. 29, 1976.

John V. Hyrup, 15 IBLA 412 (1974)

John V. Hyrup v. Rogers C. B. Morton, Civil No. 74-689, D. Colo. Rev'd & remanded for further administrative proceedings, 406 F. Supp. 214 (1976); appeal filed Jan. 14, 1976; final judgment entered May 12, 1976; appeal filed July 7, 1976; aff'd, Nov. 7, 1977; no petition.

Idaho Desert Land Entries - Indian Hill Group, 72 I.D. 156 (1965), U.S. v. Ollie Mae Shearman et al. - Idaho Desert Land Entries - Indian Hill Group, 73 I.D. 386 (1966)

Wallace Reed et al. v. Dept. of the Interior et al., Civil No. 1-65-86, D. Idaho. Order denying preliminary injunction, Sept. 3, 1965; dismissed, Nov. 10, 1965; amended complaint filed, Sept. 11, 1967.

U.S. v. Raymond T. Michener et al., Civil No. 1-65-93, D. Idaho. Dismissed without prejudice, June 6, 1966.

U.S. v. Hood Corp. et al., Civil No. 1-67-97, S.D. Idaho.

Civil Nos. 1-65-86 & 1-67-97 consolidated. Judgment adverse to U.S., July 10, 1970; rev'd, 480 F.2d 634 (9th Cir. 1973); cert. denied, 414 U.S. 1064 (1973); dismissed with prejudice subject to the terms of the stipulation, Aug. 30, 1976.

Appeal of Inter*Helo, Inc., IBCA-713-5-68 (Dec. 30, 1969), 82 I.D. 591 (1975)

John Billmeyer, etc. v. U.S., Ct. Cl. No. 54-74. Remanded with instructions to admit evidence, May 30, 1975.

Interpretation of the Submerged Lands Act, 71 I.D. 20 (1964)

Floyd A. Wallis v. Stewart L. Udall, Civil No. 3089-63. Dismissed with prejudice, Mar. 27, 1968.

Estate of Cleveland Iron Shooter, 7 IBIA 212 (1979)

Teresa Ramirez, Executor of Estate of Lola Ramirez v. Secretary of the Interior, Civil No. 79-L-293, D. Neb. Suit pending.

C. J. Iverson, 82 I.D. 386 (1975)

C. J. Iverson v. Kent Frizzell, Acting Secretary of the Interior & Dorothy D. Rupe, Civil No. 75-106-Blg, D. Mont. Stipulation for dismissal with prejudice, Sept. 10, 1976.

J. A. Jones Construction Co. et al., IBCA-233 (June 17, 1960)

Palisades Contractors et al. v. U.S., Civil No. 2247, D. Idaho. Settled.

J. A. Terteling & Sons, 64 I.D. 466 (1957)

J. A. Terteling & Sons v. U.S., Ct. Cl. No. 114-59. Judgment for defendant, 390 F.2d 926 (1968); remaining aspects compromised.

J. D. Armstrong Co., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. U.S., Ct. Cl. No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

Jensen-Rasmussen et al., IBCA-363 (Mar. 14, 1963)

Jensen-Rasmussen & Co. v. U.S., Civil No. 5963, W.D. Wash. Judgment for defendant, Feb. 24, 1964; no appeal.

Dale Johnson, A-30806 (Sept. 17, 1968)

Dale Johnson v. Stewart L. Udall, Secretary of the Interior, Civil No. A-135-68, D. Alaska. Stipulated Dismissal, Apr. 10, 1969; no appeal.

M. G. Johnson, 78 I.D. 107 (1971)
U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)

Menzel G. Johnson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CN-LV-74-158, RDF, D. Nev. Judgment for defendant, Oct. 18, 1977; appeal filed Dec. 5, 1977.

Estate of Edward Alpheus Jones, 5 IBIA 138 (1976)

Robert Sam v. U.S. et al., Civil No. 76-0552. Dismissed as to defendants U.S., Department of the Interior & the Bureau of Indian Affairs, July 30, 1976; judgment for defendant Robert C. Snashall, July 30, 1976.

June Oil & Gas, Inc., Cook Oil & Gas, Inc., 41 IBLA 394; 86 I.D. 374 (1979)

June Oil & Gas, Inc. & Cook Oil & Gas, Inc. v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. 79-1334 D. Colo. Suit pending.

Kenneth J. Kadow et al., A-30053 (Oct. 5, 1964)

Kenneth J. Kadow et al. v. Stewart L. Udall, Secretary of the Interior, Civil No. A-1-65, D. Alas. Judgment for defendant, Sept. 7, 1967; dismissed for lack of prosecution. Feb. 2, 1968; no petition.

Kanawah Coal Co., 7 IBMA 234 (1977)

Kanawah Coal Co. v. Cecil D. Andrus, No. 77-1089, United States Ct. of Appeals, 4th Cir. Petition for review denied, 553 F.2d 361 (4th Cir. 1977).

R. A. Keans, A-30183 (Feb. 16, 1965)

R. A. Keans v. Stewart L. Udall et al., Civil No. 2648-ND, S.D. Cal. Defendant's motion to dismiss granted, Nov. 22, 1965; no appeal.

Estate of Kee-ah-tha-com-oke-quah, IA-974, 975 (Sept. 16, 1965)

D. Q. (Bill) Couch v. Stewart L. Udall, Civil No. 66-282, W.D. Okla. Aff'd, 265 F. Supp. 848 (1967); aff'd, 404 F.2d 97 (10th Cir. 1968); no petition.

Kerr McGee Corp., Cabot Corp., Felmont Oil Corp., and Case-Pomeroy Corp., 6 IBLA 108 (1972), Petition for Reconsideration denied, May 14, 1974

Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. v. Rogers C. B. Morton et al., Civil No. 616-72. Dismissed with prejudice, Oct. 22, 1974; aff'd, 527 F.2d 838 (1975); no petition.

Estate of San Pierre Kilkaken (Sam E. Hill), 1 IBIA 299; 79 I.D. 583 (1972), 4 IBIA 242 (1975), 5 IBIA 12 (1976)

Christine Sam & Nancy Judge v. Thomas Kleppe, Secretary of the Interior, Civil No. C-76-14, E.D. Wash. Dismissed with prejudice.

John J. King, A-28543 (Oct. 13, 1960)

John J. King v. Stewart L. Udall, Civil No. 68-61. Judgment for plaintiff, Nov. 8, 1961; rev'd, 308 F.2d 650 (1962); no petition.

John J. King et al., Fairbanks 033268, 033279 (Sept. 25, 1964)

John J. King et al. v. Stewart L. Udall, Civil No. 2750-64. Judgment for plaintiffs, 266 F. Supp. 747 (1967); on May 4, 1967, a stipulation of voluntary dismissal with prejudice sgd. by the plaintiffs and all other parties.

John J. King, Dorothy W. King, Fairbanks 034577 (Oct. 26, 1965)

John J. and Dorothy W. King v. Stewart L. Udall, Civil No. A-6-66, D. Alaska. Dismissed with prejudice Apr. 24, 1968.

Barbara G. Kirk and Marjorie G. Wright
See Dean Kirk

Dean Kirk, A-29018a (Apr. 26, 1963), Barbara G. Kirk and Marjorie G. Wright, A-30022 (Aug. 20, 1963)

George M. Larsen et al. v. Stewart L. Udall, Civil No. 1651, D. Nev. Stipulation covering seven land entries; four are dismissed as moot, three are dismissed with prejudice.

Kirkpatrick Oil Co., 32 IBLA 329 (1977)

Kirkpatrick Oil & Gas Co. v. U.S. & Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-1247E, D. Okla. Judgment for defendant Nov. 26, 1979; appeal filed Jan. 18, 1980.

Margaret L. & Allan D. Klatt, 23 IBLA 59 (1975)

Margaret L. Klatt v. Thomas S. Kleppe, Individually & in his official capacity as Secretary of the Interior et al., Civil No. A76-44 CIV, D. Alaska. Suit pending.

Anquita L. Kluenter et al., A-30483, Nov. 18, 1965
See Bobby Lee Moore et al.

Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966)

Earl M. Lutzenhiser and Leo J. Kottas v. Stewart L. Udall et al., Civil No. 1371, D. Mont. Judgment for defendant, June 7, 1968; aff'd, 432 F.2d 328 (9th Cir. 1970); no petition.

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 185 (1958)

Max Krueger v. Fred A. Seaton, Civil No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum and Cale M. Shearer, A-30838 (Dec. 21, 1967)

James M. Krumtum & Cale M. Shearer v. Udall et al., Civil No. 6567, D. Ariz. Judgment for defendant, Jan. 6, 1970; no appeal.

Joseph T. Kurkowski, 15 IBLA 13 (1974)

John & Ruth E. Melcher v. Edwin Zaidlicz, Montana Dir. of the Bureau of Land Management, et al., Civil No. 74-34-BLG, D. Mont. Dismissed for want of jurisdiction, Sept. 4, 1974; dismissed, Sept. 11, 1975.

Richard M. Lade, As Attorney in Fact for Santa Fe Pacific R. R., A-29121 (Jan. 10, 1963)

Richard M. Lade, Attorney in Fact for Santa Fe Pacific R. R. v. Udall et al., Civil No. 67-14, D. Ore. Judgment for defendant, 295 F. Supp. 265 (1968); aff'd, 432 F.2d 254 (9th Cir. 1970); no petition.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil No. 2784-62. Judgment for defendant, Mar. 6, 1963; aff'd, 324 F.2d 428 (1963); cert. denied, 376 U.S. 907 (1964).

W. Dalton La Rue, Sr. & Juanita S. La Rue, d/b/a Winnemucca Ranch, Appellants, N. S. Land & Livestock Co., Intervenor, 9 IBLA 208 (1973)

W. Dalton La Rue, Sr. & Juanita S. La Rue v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-2827, D. Nev. Judgment for defendant, Mar. 12, 1974; aff'd, Mar. 2, 1976; rehearing denied, Apr. 21, 1976; cert. denied, Nov. 1, 1976.

Langdon H. Larwill et al., A-28697 (May 16, 1963)

Pacific Oil Co., a Corp. v. Stewart L. Udall, Civil No. 9406, D. Colo. Judgment for defendant, 273 F. Supp. 203 (1967); aff'd, 406 F.2d 452 (10th Cir. 1969); cert. denied, 395 U.S. 978 (1969).

Donald J. Laughlin, d/b/a/ Riverside Resort & Casino, 25 IBLA 41 (1976) On Reconsideration, 26 IBLA 154 (1976)

Donald J. Laughlin v. Thomas S. Kleppe, individually & as Secretary of the Interior, Curt Berklund, individually & as Director, Bureau of Land Management, & H. M. Bruce, individually & as Yuma District Manager of the BLM, Civil No. 76-237 RDF, D. Nev. Order granting motion to transfer case to Ariz. granted, May 4, 1977 (Civil No. 77-380-PHX-WPC, D. Ariz.) Suit pending.

River Queen Corp., an Arizona Corp., d/b/a River Queen Resort v. Thomas S. Kleppe, individually & as Secretary of Interior, et al., Civil No. CIV 76-873 PCT-WPC, D. Ariz. Suit pending.

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. U.S., Ct. Cl. No. 393-67. Dismissed, 410 F.2d 782 (1969); no petition.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil No. 474-64. Judgment for defendant, Oct. 5, 1964; appeal voluntarily dismissed, Mar. 26, 1965.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secertary of the Interior, Civil No. 5003 Phx., D. Ariz. Judgment for defendant, July 31, 1967; amended judgment for defendant, May 28, 1968; aff'd, 427 F.2d 673 (9th Cir. 1970); cert. denied, 400 U.S. 992 (1970).

Perley M. Lewis and Mildred C. Lewis, A-28707 (Dec. 30, 1963)

Perley M. Lewis et ux. v. Stewart L. Udall et al., Civil No. 5451 Phx., D. Ariz. Judgment for defendant, Mar. 22, 1966; aff'd, 374 F.2d 180 (9th Cir. 1967); no petition.

Administrative Appeal of Ruth Pinto Lewis v. Superintendent of the Eastern Navajo Agency, 4 IBIA 147; 82 I.D. 521 (1975)

Ruth Pinto Lewis, Individually & as the Administratrix of the Estate of Ignacio Pinto v. Thomas S. Kleppe, Secretary of the Interior, & U.S., Civil No. CIV-76-223 M, D.N.M. Judgment for plaintiff, July 21, 1977; no appeal.

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 2932-62. Judgment for defendant, July 15, 1963; no appeal.

Milton H. Lichtenwalner et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil No. A-21-63, D. Alaska. Dismissed on merits, Apr. 24, 1964; stipulated dismissal of appeal with prejudice, Oct. 5, 1964.

Linn Land Co., A-28765 (July 12, 1962)

Linn Land Co. et al. v. Stewart L. Udall, Civil No. 63-264, D. Ore. Consolidated with Forsberg v. Udall, Schmand v. Udall, & Property Management Co. v. Udall, Battle Mt. Co. v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam dec. as to Battle Mountain. Stipulated dismissal on appeal, Oct. 13, 1966.

Merwin E. Liss et al. 70 I.D. 231 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall et al., Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; per curiam dec., aff'd, Apr. 28, 1966; no petition.

Frederick W. Lowey, et al., 40 IBLA 381 (1979)

Frederick W. Lowey, et al. v. Cecil D. Andrus, et al., Civil No. 79-3314. Suit pending.

John A. Gallagher, et al. v. Cecil D. Andrus, et al., Civil No. 79-3315. Suit pending.

J. E. Ham, et al. v. Cecil D. Andrus, et al., Civil No. 79-3316. Suit pending.

Dr. Heinz & Ursula Lichtenstein, et al. v. Cecil D. Andrus, et al., Civil No. 79-3317. Suit pending.

James M. Ross, et al. v. Cecil D. Andrus, et al., Civil No. 79-3318. Suit pending.

Richard K. Vitek, et al. v. Cecil D. Andrus, et al., Civil No. 79-3319. Suit pending.

Leland M. Lucas, A-29228 (Dec. 10, 1962)

Leland Murray Lucas v. Stewart L. Udall et al., Civil No. 5007 Phx., D. Ariz. Stipulated dismissal, Oct. 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunice Lucero Vaile v. Stewart L. Udall, Civil No. 6808, W.D. Wash. Judgment for defendant, May 12, 1967; summary judgment entered May 25, 1967; no appeal.

Estate of Richard Lucero, 1 IBIA 46 (1970)

Eunice Lucero Vaile v. Rogers C. B. Morton et al., Civil No. 9585, D. Wash. Judgment for defendant, Jan. 14, 1972; aff'd, Feb. 26, 1974; no petition.

Bess May Lutey, 76 I.D. 37 (1969)

Bess May Lutey et al. v. Dept. of Agriculture, BLM, et al., Civil No. 1817, D. Mont. Judgment for defendant, Dec. 10, 1970; no appeal.

Joseph MacIsaac et al., 8 IBLA 51 (1972)

Joseph F. MacIsaac, Stanley P. Cornelius, Hillen L. Arnold, Henry E. Reeves, Starling P. Cornelius, Richard Ransom v. Rogers C. B. Morton, Civil No. A-6-73, D. Alaska. Dismissed with prejudice for want of prosecution by plaintiff, Dec. 19, 1974.

James W. McDade, 3 IBLA 226 (1971)

James W. McDade v. Rogers C. B. Morton, Civil No. 2437-71. Judgment for defendant, 353 F. Supp. 1006 (1973); per curiam decision, aff'd, 494 F.2d 1156 (D.C. Cir. 1974); no petition.

Sheridan L. McGarry, A-28759 (Jan. 26, 1962)

Sheridan L. McGarry v. Stewart L. Udall, Civil No. 1262-62. Judgment for defendant, 216 F. Supp. 314 (1962); no petition.

Elgin A. McKenna Executrix, Estate of Patrick A. McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the Estate of Patrick A. McKenna, Deceased v. Udall, Civil No. 2001-67. Judgment for defendant, Feb. 14, 1968; aff'd, 418 F.2d 1171 (1969); no petition.

Mrs. Elgin A. McKenna, Widow and Successor in Interest of Patrick A. McKenna, Deceased v. Walter J. Hickel, Secretary of the Interior, et al., Civil No. 2401, D. Ky. Dismissed with prejudice, May 11, 1970.

A. G. McKinnon, 62 I.D. 164 (1955)

A. G. McKinnon v. U.S., Civil No. 9433, D. Ore. Judgment for plaintiff, 178 F. Supp. 913 (1959); rev'd, 289 F.2d 908 (9th Cir. 1961).

Estate of Alvina Beauvois McLean, IA-D-27 (Feb. 14, 1969), IA-D-30 (July 24, 1969)

Kenneth Samuel McLean v. Walter J. Hickel, Secretary of the Interior, Civil No. 2721-69, D.C. Judgment for defendant, Mar. 13, 1970; dismissed for lack of prosecution, Apr. 9, 1971.

Estate of Elizabeth C. Jensen McMaster, 5 IBIA 61; 83 I.D. 145 (1976)

Raymond C. McMaster v. U.S. Dept. of the Interior, Secretary of the Interior & Bureau of Indian Affairs, Civil No. C76-129T, W.D. Wash. Dismissed, June 29, 1978.

Wade McNeil et al., 64 I.D. 423 (1957)

Wade McNeil v. Fred A. Seaton, Civil No. 648-58. Judgment for defendant, June 5, 1959 (opinion); rev'd, 281 F.2d 931 (1960); no petition.

Wade McNeil v. Albert K. Leonard et al., Civil No. 2226, D. Mont. Dismissed, 199 F. Supp. 671 (1961); order, Apr. 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil No. 678-62. Judgment for defendant, Dec. 13, 1963 (opinion); aff'd, 340 F.2d 801 (1964); cert. denied, 381 U.S. 904 (1965).

Wade McNeil, A-30736 (Apr. 20, 1967)

Wade McNeil v. Udall, Civil No. 2705, D. Mont. Judgment for defendant, Feb. 6, 1969 (opinion); no appeal.

J. W. McTiernan, 11 IBLA 284 (1973)

J. W. McTiernan v. Marvin Franklin, Acting Secretary of the Interior, Civil No. 73-481-B, W.D. Okla. Dismissed, Apr. 4, 1974; aff'd, Jan. 7, 1975.

J. W. McTiernan, 14 IBLA 369 (1974)

J. W. McTiernan v. Rogers C. B. Morton, Secretary of the Interior, Civil No. FS-74-42-C, W.D. Ark. Judgment for defendant, Feb. 4, 1977.

Marathon Oil Co., 81 I.D. 447 (1974), Atlantic Richfield Co., Marathon Oil Co., 81 I.D. 457 (1974)

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior et al., Civil No. C 74-179, D. Wyo.

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-181, D. Wyo.

Actions consolidated; judgment for plaintiff, 407 F. Supp. 1301 (1975); aff'd, 556 F.2d 982 (10th Cir. 1977).

Estate of Andrew Jackson Marsh, 4 IBIA 106 (1975)

Warren Dale Ling & Francis Miles Ling, commonly known as "Frank Ling" v. Kent Frizzell, Acting Secretary of the Interior, Civil No. C-75-200, E.D. Wash. Judgment for defendant, Jan. 27, 1976.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26, 1971)

Roy L. Matchett v. U.S., Ct. Cl. 40-72. Dismissed with prejudice, Sept. 25, 1973.

Billy Mathis et al., A-30512 (July 6, 1966)

Billy Mathis et al. v. Stewart L. Udall et al., Civil No. 6833, D.N.M. Dismissed with prejudice, Jan. 6, 1967; rendered moot by P.L. 89-365.

Ralph E. May, A-29014 (Jan. 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil No. 1379-62. Dismissed with prejudice, Mar. 22, 1963; no appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-T-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, Feb. 8, 1967.

Allan E. Mecham et al., A-30244 (Dec. 23, 1964)

Allan E. Mecham et al. v. Stewart L. Udall et al., Civil No. C-22-65, D. Utah. Motion to dismiss granted, May 11, 1965; aff'd, 369 F.2d 1 (10th Cir. 1966); no petition.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian etc. v. Fred A. Seaton, Civil No. 468-58. Judgment for plaintiff, Nov. 16, 1959; motion for reconsideration denied, Dec. 2, 1959; no appeal.

Philip T. Garigan v. Stewart L. Udall, Civil No. 1577 Tux., D. Ariz. Preliminary injunction against defendant, July 27, 1966; supplemental dec. rendered Sept. 7, 1966; judgment for plaintiff, May 16, 1967; no appeal.

Meva Corp., 76 I.D. 205 (1969)

Meva Corp. v. U.S., Ct. Cl. No. 492-69. Judgment for plaintiff, 511 F.2d 548 (1975).

Albert P. Mickunas, 12 IBLA 275 (1973)

Albert P. Mickunas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-1820 WPG, C.D. Cal. Dismissed with prejudice, Sept. 30, 1974; dismissed, May 14, 1976; rehearing denied, June 3, 1976; cert. denied, Nov. 8, 1976.

Donald E. Miller, 2 IBLA 309 (1971), 15 IBLA 95 (1974)

Donald E. Miller v. Walter J. Hickel et al., Civil No. C-70-2328, D. Cal. Remanded to the Department for further proceedings, July 5, 1973; dismissed with prejudice, Feb. 6, 1975.

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil No. 346-60. Judgment for defendant, Feb. 23, 1961; aff'd, 307 F.2d 676 (1962); cert. denied, 371 U.S. 967 (1963); rehearing denied, 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia & Shell Oil Co. v. Stewart L. Udall, Civil No. 562-60. Judgment for defendant, June 27, 1961; no appeal.

Duncan Miller, A-28008 (Aug. 10, 1959), A-28093 et al. (Oct. 30, 1959), A-28133 (Dec. 22, 1959), A-28378 (Aug. 5, 1960), A-28258 et al. (Feb. 10, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3470-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Duncan Miller, A-28057 (Oct. 16, 1959), A-28398 (Aug. 31, 1960), A-28359 (July 18, 1960), A-28433 (Aug. 30, 1960), A-28293, A-28436 (June 7, 1960), A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (Mar. 31, 1959), A-27810 (Jan. 16, 1959)

Duncan Miller v. Stewart L. Udall, Civil No. 3931-60. Judgment for defendant, Apr. 4, 1963; aff'd, per curiam dec., Feb. 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, Aug. 13, 1964; aff'd, Jan. 12, 1965; no petition.

Duncan Miller, A-28528 et al. (Feb. 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil No. 3904-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Duncan Miller, A-28509 (Oct. 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 187-61. Judgment for defendant, May 24, 1963; no appeal.

Duncan Miller, A-28172 (Feb. 11, 1960), A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3932-60. Judgment for defendant, May 22, 1963; aff'd, Feb. 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, Aug. 13, 1964; aff'd, Jan. 12, 1965; no petition.

Duncan Miller, A-28586, A-28633, A-28671, A-28686 (Jan. 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 1268-61. Judgment for defendant, Sept. 28, 1962; appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 3409-61. Judgment for defendant, May 21, 1963; no appeal.

Duncan Miller, A-29312 (Jan. 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1381-62. Judgment for defendant, Nov. 21, 1962 (opinion); appeal dismissed Apr. 12, 1963.

Duncan Miller, A-28937 (Sept. 25, 1962), A-29041 (Nov. 7, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 4003-62. Dismissed for want of prosecution, May 1966.

Duncan Miller, A-29365 (July 1, 1963), A-29521 (Aug. 29, 1963), & A-29633 (Sept. 5, 1963)

Duncan Miller v. Stewart L. Udall, Civil No. 2413-63. Dismissed, Oct. 2, 1967; no appeal.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. Stewart L. Udall, Civil No. 931-63. Dismissed for lack of prosecution, Apr. 21, 1966; no appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. Stewart L. Udall, Civil No. 1522-64. Judgment for defendant, June 29, 1965; no appeal.

Duncan Miller, A-29900 (Mar. 5, 1964), A-30067 (Mar. 12, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 689-64. Dismissed for failure to prosecute, July 6, 1966.

Duncan Miller, A-30213 (Apr. 8, 1964), A-30192 (Apr. 9, 1964), A-30212 (July 13, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 1829-64. Judgment for defendant, Sept. 28, 1965; no appeal.

Duncan Miller, A-30122 (Sept. 23, 1964), A-30451 (Nov. 17, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2543-64. Motion to amend granted, Feb. 15, 1966; dismissed, Apr. 3, 1969; no appeal.

Duncan Miller, A-30270 (May 5, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. C-153-65, D. Utah. Judgment for defendant, Nov. 15, 1965; aff'd, 368 F.2d 548 (10th Cir. 1966); no petition.

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966; no appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2384-65. Judgment for defendant, Oct. 12, 1966; dismissed May 22, 1967; supp. complaint dismissed June 12, 1967; appeal dismissed Apr. 12, 1968; petition for mandamus denied, Oct. 14, 1968.

Duncan Miller, A-30517 (Apr. 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. 5047, D. Wyo. Judgment for defendant, Aug. 11, 1966; appeal dismissed, Sept. 14, 1967.

Duncan Miller, A-30546 (Aug. 10, 1966), A-30566 (Aug. 11, 1966), & 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissed with prejudice, Apr. 17, 1967; no appeal.

Duncan Miller, A-30570 (Aug. 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alas. Judgment for defendant, Mar. 13, 1967; motion for reconsideration denied, Sept. 19, 1967; no appeal.

Duncan Miller, A-29231 (Feb. 5, 1963)
See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-30669 (Nov. 8, 1966)

Duncan Miller v. Director of the Bureau of Land Management, Civil No. 779, D. Mont. Judgment for defendant, Apr. 25, 1969; no appeal.

Duncan Miller, A-30628 (Nov. 16, 1966), A-30684 (Jan. 19, 1967), A-30708 (Nov. 16, 1966), A-30797 (Sept. 12, 1967)

Duncan Miller v. Secretary of the Interior & his officers, Civil No. 7334, D.N.M. Dismissed with prejudice, Aug. 28, 1968; motion to set aside judgment denied, Sept. 24, 1968; motion for reconsideration denied, Nov. 4, 1968.

Duncan Miller, A-30891 (Mar. 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice, Oct. 14, 1968; no appeal.

Duncan Miller, A-30924 (Nov. 13, 1968), A-30934 (Nov. 22, 1968), A-30966 (Oct. 29, 1968), A-31054 (Aug. 21, 1969)

Duncan Miller v. Secretary of the Interior, Civil No. 52-69. Amended complaint dismissed without prejudice, July 20, 1970; motion to reinstate case denied, Jan. 6, 1972; motion for reconsideration denied, Feb. 7, 1972.

Duncan Miller, A-31087 (Feb. 4, 1970), A-31095 (Feb. 2, 1970), A-31148 (Mar. 2, 1970), A-31159 (Mar. 2, 1970)

Duncan Miller v. Officers of the BLM & Dept. of the Interior, Civil No. 1393-70. Dismissed for failure to prosecute, Jan. 4, 1971; no appeal.

Duncan Miller, 4 IBLA 274 (1972)

Duncan Miller v. Adjudicative Officers of the U.S. Geological Survey, Tulsa, Okla., & the Adjudicative Officers of the Bureau of Land Management, Civil No. 73-C-96, N.D. Okla. Dismissed with prejudice, Nov. 2, 1973; motion for rehearing denied, Nov. 14, 1973; appeal dismissed, Feb. 8, 1974.

Duncan Miller, 6 IBLA 283 (1972), 6 IBLA 507 (1972), 7 IBLA 343 (1972)

Duncan Miller v. Adjudicative Officers of the Bureau of Land Management, Dept. of the Interior, Civil No. 1757-72. Judgment for defendant, Feb. 7, 1973; motion to set aside judgment denied, Mar. 5, 1973.

Duncan Miller, 7 IBLA 343 (1972), 16 IBLA 24 (1974), 16 IBLA 71 (1974), 16 IBLA 379 (1974)

Duncan Miller v. Bureau of Land Management, Department of the Interior, Secretary of the Interior, Civil No. 74-1488. Dismissed, Dec. 4, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 74-53-BLG, D. Mont. Dismissed, Oct. 31, 1974; motion to amend complaint denied, Dec. 18, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 1146, D. Mont. Dismissed, June 29, 1973; appeal not pursued by plaintiff.

Duncan Miller v. Officers of the Department of the Interior, Civil No. 76-48 BLG, D. Mont. Suit pending.

Duncan Miller, 10 IBLA 27 (1973)

Duncan Miller v. Administrative Officers of the Bureau of Land Management & Dept. of the Interior, Civil No. 1035-73. Dismissed, Oct. 30, 1973; motions for reconsideration denied respectively, Dec. 4, 1973, Jan. 4, 1974, Apr. 5, 1974; appeal dismissed, & Aug. 27, 1975; motion for rehearing denied, Aug. 27, 1975; motion for reconsideration denied, Nov. 6, 1975; application for extension of time to file writ of certiorari filed; no petition.

Duncan Miller, 12 IBLA 199, 201, 206 (1973), IBLA 73-319, 406, 407, 410, 411, 412, IBLA 74-12, 16 (Order of dismissal dated July 17, 1973)

Duncan Miller v. The Board of Land Appeals, Department of the Interior, Civil No. 1929-73. Dismissed, Feb. 15, 1974; appeal dismissed, Aug. 27, 1975; motion for rehearing denied, Aug. 27, 1975; motion for reconsideration denied, Nov. 6, 1975; application for extension of time to file writ of certiorari filed; no petition.

Suits for Judicial Review

Duncan Miller, 12 IBLA 201 (1973), 12 IBLA 206 (1973)

Duncan Miller v. Admin. Officers, California Bureau of Land Management, Civil No. S-2471, D. Cal. Dismissed, June 25, 1973; motion for rehearing filed June 29, 1973.

Duncan Miller, 15 IBLA 275 (1974), Order, May 13, 1974

Duncan Miller v. Operating Officers of the Bureau of Land Management, The Department of the Interior, & The Hon. Secretary of the Interior (Nominal Defendant), Civil No. 74-1116. Dismissed, Oct. 22, 1974; no appeal.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), IBLA 75-379 (dismissed by order, Mar. 20, 1975), IBLA 75-365 (dismissed by order, Mar. 24, 1975)

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-0905. Complaint dismissed, Aug. 8, 1975; reconsideration denied, Sept. 16, 1975.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), 21 IBLA 50 (1975), 22 IBLA 52 (1975), IBLA 75-379 (dismissed by order, Mar. 20, 1975), IBLA 75-365 (dismissed by order, Mar. 24, 1975), IBLA 75-251, 75-289, 75-326, 75-327, 75-382, 75-426 (dismissed by orders, Apr. 30, 1975), IBLA 75-278 (dismissed by order, May 22, 1975)
See also Evelyn R. Robertson

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-2138. Dismissed; appeal dismissed.

John R. Mimick et al., 25 IBLA 107 (1976)

John R. Mimick, James W. Belmont, Thomas J. Lauvetz & Arthur J. Denney v. Thomas Kleppe, Individually & in his capacity as Secretary of the Interior, Civil No. 76-0-240, D. Neb. Dismissed without prejudice, Dec. 21, 1976.

Mitchell Energy Corp., 32 IBLA 244 (1977)

Mitchell Energy Corp. v. Cecil D. Andrus, Individually & as Secretary of the Interior, Civil No. 77-2165. Judgment for defendant, Nov. 30, 1978; no appeal.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan et al. v. Warren J. Gray et al., Civil No. 4877 Phx., D. Ariz. Judgment for defendant, Nov. 13, 1967; aff'd, 413 F.2d 349 (9th Cir. 1969); no petition.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough et al., Civil No. C-200-63, D. Utah. Judgment for defendant, Jan. 8, 1964; no appeal.

Monturah Co., 10 IBLA 347 (1973)

Charles S. Pashayan, Lillie A. Pashayan, Charles S. Pashayan, Jr., & Suzanne Lillie Pashayan, Co-partners, d/b/a Monturah Co. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1083 (9th Cir.). Dismissed for lack of jurisdiction, Apr. 24, 1974; Civil No. F-74-5-Civ, E.D. Cal. Dismissed without prejudice, Apr. 11, 1974.

Bobby Lee Moore et al., 72 I.D. 505 (1965)
Anquita L. Kluenter et al., A-30483 (Nov. 18, 1965)

Gary Carson Lewis, etc., et al. v. General Services Administration et al., Civil No. 3253, S.D. Cal. Judgment for defendant, Apr. 12, 1965; aff'd, 377 F.2d 499 (9th Cir. 1967); no petition.

Henry S. Morgan et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil No. 3248-59. Judgment for defendant, Feb. 20, 1961 (opinion); aff'd, 306 F.2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., 64 I.D. 185 (1957)

Morrison-Knudsen Co. v. U.S., Ct. Cl. No. 239-61. Remanded to Trial Comm'r, 345 F.2d 833 (1965); Commr's report adverse to U.S. issued June 20, 1967; judgment for plaintiff, 397 F.2d 826 (1968); part remanded to the Board of Contract Appeals; stipulated dismissal on Oct. 6, 1969; judgment for plaintiff, Feb. 17, 1970.

Mildred A. Moss et al., 28 IBLA 364 (1977), Reconsideration denied, Mar. 18, 1977

Mildred A. Moss, Emily C. Biester, Donald E. Howell, Robert C. Pass & Thomas L. Williams v. Cecil D. Andrus, Secretary of the Interior, Arthur W. Zimmerman, State Director, Bureau of Land Management & Raul E. Martinez, Chief, Minerals Section, Bureau of Land Management, Civil No. CIV 77-234 B, D.N.M. Judgment for defendant, Nov. 1, 1977; aff'd, Sept. 20, 1978.

Glenn Munsey, Earnest Scott & Arnold Scott v. Smitty Baker Coal Co., 1 IBMA 208 (1972), 8 IBMA 43 (1977)

Glenn Munsey, Arnold Scott & Earnest Scott, Miners v. Rogers C. B. Morton, Secretary of the Interior et al., No. 72-2095, United States Court of Appeals for the District of Columbia Circuit. Vacated & remanded, 507 F.2d 1202 (1974).

Glenn Munsey v. Smitty Baker Coal Co., Ralph Baker, Smitty Baker, & P & P Coal Co., 84 I.D. 336 (1977)

Glenn Munsey v. Cecil D. Andrus, No. 77-1619, United States Ct. of Appeals, D.C. Cir. Suit pending.

Uniform Relocation Assistance Appeal of Numerous Navajo Persons Who Reside on Black Mesa in Arizona, 1 OHA 292 (1976)

Buck Austin, Lilly, Jack & Billy Chief, Alta Rose Albert, Betty Crank, Manymule's Daughter #2, Steven & Kee Lake & Kee Begay v. Morris Thompson, Comm'r of Indian Affairs, Civil No. CIV-76-418-PCT-CAM, D. Ariz. Judgment for defendant, Jan. 20, 1978; appeal filed Mar. 15, 1978.

Navajo Tribe of Indians v. State of Utah, 80 I.D. 441 (1973)

Navajo Tribe of Indians v. Rogers C. B. Morton, Secretary of the Interior, Joan B. Thompson, Martin Ritvo & Frederick Fishman, members of the Board of Land Appeals, Dept. of the Interior, Civil No. C-308-73, D. Utah. Dismissed with prejudice, Jan. 4, 1979.

New England Fish Co., 42 IBLA 200 (1979)

New England Fish Co. v. Robert E. Sorenson, Chief, Branch of Lands & Minerals Operations BLM, Alaska State Office, Department of the Interior, Civil No. A79-283 CIV, D. Alaska. Suit pending.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil No. 3207-62. Judgment for defendant, 234 F. Supp. 651 (1964); no appeal.

Jess H. Nicholas, Jr., A-30065 (Oct. 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil No. A-67-64, D. Alaska. Judgment for defendant, Sept. 17, 1965; aff'd, 385 F.2d 177 (9th Cir. 1967); no petition.

Robert D. Nininger, Appellant, Paul C. Kohlman, Appellee, 16 IBLA 200 (1974)

Robert D. Nininger v. Rogers C. B. Morton & Kenneth J. Sire, Civil No. 74-1246. Defendant's motion for summary judgment granted, Mar. 20, 1975; no appeal.

Leonard E. Noren, A-27583 (Sept. 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil No. 2139 ND, S.D. Cal. Judgment for defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil No. 2347 ND, S.D. Cal. Judgment for plaintiff, Sept. 17, 1965; rev'd & remanded sub nom. Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren et al., rev'd & remanded, 370 F.2d 845 (9th Cir. 1966); cert. denied, 387 U.S. 917 (1967).

Appeal of North Star Aviation Corp., IBCA-741 (May 19, 1969)

North Star Aviation Corp. v. U.S., Ct. Cl. No. 264-69. Commr's report adverse to U.S. issued Dec. 10, 1971; judgment for plaintiff, 458 F.2d 64 (1972).

Northwest Citizens for Wilderness Mining Co., 33 IBLA 317 (1978)

Northwest Citizens for Wilderness Mining Co. v. The Bureau of Land Management & Edna A. Haverland, Individ. & Chief, Branch of Records & Data Management, BLM, Civil No. 78-46-M, D. Mont. Suit pending.

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil No. 4181-60. Dismissed, Nov. 15, 1963; case reinstated, Feb. 19, 1964; remanded, Apr. 4, 1967; rev'd & remanded with directions to enter judgment for appellant, 389 F.2d 974 (1968); cert. denied, 392 U.S. 909 (1968).

Oil and Gas Leasing on Lands Withdrawn by Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. 760-63, D. Alaska. Withdrawn Apr. 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil No. A-17-63, D. Alaska. Dismissed, Apr. 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil No. A-15-63, D. Alaska. Dismissed, Oct. 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. A-20-63, D. Alaska. Dismissed, Oct. 29, 1963 (oral opinion); aff'd, 332 F.2d 62 (9th Cir. 1964); no petition.

George L. Gucker v. Stewart L. Udall, Civil No. A-39-63, D. Alaska. Dismissed without prejudice, Mar. 2, 1964; no appeal.

Oil Resources, Inc., 28 IBLA 394; 84 I.D. 91 (1977)

Oil Resources, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-0147, D. Utah. Suit pending.

Estate of Rose Old Bear Wilson, 4 IBIA 62 (1975)

James Harold Kindness & Sherman Wilson, Jr. v. Kent Frizzell, Acting Secretary, Department of the Interior, Civil No. 75-76-Blg, D. Mont. Judgment for defendant, Apr. 9, 1976.

Old Ben Coal Co., 81 I.D. 428, 81 I.D. 436, 81 I.D. 440 (1974)

Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals et al., Nos. 74-1654, 74-1655, 74-1656, United States Court of Appeals for the 7th Cir. Board's decision aff'd, June 13, 1975; reconsideration denied, June 27, 1975.

Old Ben Coal Co., 82 I.D. 355 (1975)

United Mine Workers of America v. U.S. Interior Board of Mine Operations Appeals, No. 75-1852, United States Court of Appeals, D.C. Circuit. Vacated & remanded with instructions to dismiss as moot, June 10, 1977.

Old Ben Coal Co., 84 I.D. 459 (1977)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1840, United States Ct. of Appeals, D.C. Cir. Suit pending.

George Ondola, 17 IBLA 363 (1974)
See Virginia Gail Atchison

Susie Ondola, 17 IBLA 359 (1974)
See Virginia Gail Atchison

Joseph I. O'Neill, Jr., A-30488 (Apr. 19, 1966), A-30488 (Supp.) (Dec. 7, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall, Civil No. 3556-SD-K, S.D. Cal. Remanded to the Dept. for clarification of Departmental decision, Aug. 12, 1966; order denying defendant's motion for summary judgment, without prejudice & remanding case for clarification of the affirmance of the Departmental decision, Mar. 8, 1967; no appeal; stipulated dismissal, Nov. 22, 1971.

Appeal of Ounalashka Corp., 1 ANCAB 104; 83 I.D. 475 (1976)

Ounalashka Corp., for & on behalf of its Shareholders v. Thomas Kleppe, Secretary of the Interior & his successors & predecessors in office, et al., Civil No. A76-241 CIV, D. Alaska. Suit pending.

Oyate, Inc. et al., IA-2629

Oyate, Inc. a nonprofit South Dakota Corp. et al. v. Rogers C. B. Morton, Civil No. 687-73. Dismissed, Jan. 7, 1974.

Elizabeth Pagedas, 38 IBLA 130 (1978), On Reconsideration, 40 IBLA 21 (1979)

Elizabeth Pagedas, Athena Pagedas, Kap Bae, Anna Sarantos & Fred Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior & Wyo. State Office, Bureau of Land Management, Civil No. 79-2456. Suit pending.

Eugene C. Paine et al., A-27632 (Aug. 21, 1958)

Eugene C. Paine et al. v. Stewart L. Udall, Civil No. 2607-58. Judgment for plaintiff, Sept. 24, 1959; vacated & remanded, Wright v. Seaton, Misc. 1403, Jan. 11, 1960. Judgment for plaintiff, May 4, 1960; rev'd & remanded, Feb. 23, 1961; Judgment for defendant, Mar. 20, 1961; no petition.

Irene Mitchell Pallin, A-28766 (Sept. 21, 1962)

Irene Mitchell Pallin v. U.S. & Edward Elmer Mitchell, Jr., Civil No. 47552, N.D. Cal. Judgment for plaintiff, Dec. 16, 1970; rev'd, 496 F.2d 27 (9th Cir. 1974); no petition.

Pan American Petroleum Corp., IA-840 (Dec. 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961); subsequent administrative appeal & supplemental complaint filed; judgment for plaintiff, Feb. 16, 1966; no appeal.

Jack W. Parks v. L & M Coal Corp., 83 I.D. 710 (1976)

Jack W. Parks v. Thomas S. Kleppe, No. 76-2052, United States Ct. of Appeals, D.C. Cir. Voluntary dismissal, May 4, 1977.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. U.S., Ct. Cl. No. 40-58. Stipulated judgment for plaintiff, Dec. 19, 1958.

Peabody Coal Co., 34 IBLA 139 (1978), 36 IBLA 242 (1978)

Peabody Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Guy Martin, Assistant Secretary, Land & Water Resources, Frank Gregg, Dir. Bureau of Land Management, Civil No. C78-161, D. Wyo. Judgment for plaintiff Sept. 19, 1979; no appeal.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68. Judgment for defendant, 427 F.2d 722 (1970).

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322 (June 7, 1966)

Don & Winona James v. Mabel George Gomez et al., Civil No. S-66-104, E.D. Cal. Dismissed with prejudice as to defendants Udall, Crow & Hall, May 22, 1969; dismissed with prejudice as to defendant Gomez, Sept. 1, 1970.

Peter Kiewit Sons' Co., 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S., Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Curtis D. Peters, 80 I.D. 595 (1973)

Curtis D. Peters v. U.S., Rogers C. B. Morton, as Secretary of the Interior, Civil No. C-75-0201 RFP, N.D. Cal. Judgment for defendant, Dec. 1, 1975; no appeal.

Frederick T. Peters, et al., 41 IBLA 262 (1979)

Stewart Capital Corp., Cynthia S-H Bowers, Marvyn Carton, William Feick, Jr., Amey M. Harrison, Kenneth K. Kohrs, Phyllis Johnston, Barbara Michaels, Frederick T. Peters, R. J. Russette, Rharrc Associates, Donald Beck, Sherwin Gandee, Irwin Kramer & Joseph Fiato v. Raul Martinez, Chief, Mineral Sec., New Mexico State Office, BLM, Civil No. CIV-79-042C, D.N.M. Suit pending.

M. Blaine Peterson, A-28111 (Nov. 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil No. 3953-60. Dismissed without prejudice, Nov. 13, 1961; no appeal.

Virgil V. Peterson & Hiko Bell Mining & Oil Co., 37 IBLA 18 (1978)

Virgil V. Peterson v. The Dept. of Interior & Cecil D. Andrus, Secretary of the Interior, Civil No. C 78-0463, D. Utah. Suit pending.

Hiko Bell Mining & Oil Corp. v. Cecil D. Andrus, Secretary of the Interior, Guy Martin, Assistant Secretary, Land & Water Resources, & Frank Gregg, Dir., Bureau of Land Management, Civil No. C78-0465, D. Utah. Suit pending.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1959)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F.2d 793 (1968).

City of Phoenix v. Alvin B. Reeves et al., 81 I.D. 65 (1974)

Alvin B. Reeves, Genevieve C. Rippey, Leroy Reeves & Thelma Reeves, as heirs of A. H. Reeves, Deceased v. Rogers C. B. Morton, Secretary of the Interior & The City of Phoenix, a municipal Corp., Civil No. 74-117 PHX-WPC, D. Ariz. Dismissed with prejudice, Aug. 9, 1974; reconsideration denied, Sept. 24, 1974; no appeal.

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1351-62. Judgment for defendant, Aug. 2, 1962; aff'd, 317 F.2d 573 (1963); no petition.

Platte Valley Construction Co., IBCA-168 (Aug. 28, 1958)

George Stanek et al. v. U.S., Ct. Cl. 189-72. Compromised.

Pocahontas Fuel Co., 83 I.D. 690 (1976)

Howard Mullins v. Cecil D. Andrus, No. 77-1087, United States Ct. of Appeals, D.C. Cir. Suit pending.

Pocahontas Fuel Co., 84 I.D. 489 (1977)

Pocahontas Fuel Co., Div. of Consolidation Coal Co. v. Cecil D. Andrus, No. 77-2239, United States Ct. of Appeals, 4th Cir. Suit pending.

John M. Pomeroy, A-28134 (Jan. 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil No. 8033, N.D. Cal. Dismissed by plaintiff, Aug. 15, 1961; no appeal.

Port Blakely Mill Co., 71 I.D. 217 (1964)

Port Blakely Mill Co. v. U.S., Civil No. 6205, W.D. Wash. Dismissed with prejudice, Dec. 7, 1964.

L. O. Power et al., 22 IBLA 15 (1975)

L. O. Power, Ellis J. & Lois Dover, & Noble Ribelin v. U.S. & Kent Frizzell, Acting Secretary of the Interior, Civil No. CIV 75-708 PHX WPC, D. Ariz. Suit pending.

Property Management Co., A-29144 (Aug. 19, 1963)

Property Management Co. v. Stewart L. Udall, Civil No. 64-28, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (1975), 26 IBLA 340 (1966) (Supp.)

Barbara C. Lisco v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-281, D.N.M. Remanded to the Department, Apr. 3, 1976.

Nola Grace Ptasynski v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-282, D.N.M. Remanded to the Department, Apr. 6, 1976; judgment for defendants, May 5, 1977.

R. E. Puckett, A-30419 (Oct. 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65. Dismissed without prejudice, Aug. 15, 1966.

Estate of Henry Frank Racine, 7 IBIA 1 (1978)

Martha Alfreda Racine Crawford et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CV-76-8-6F, D. Mont. Dismissed July 13, 1979; appeal filed Sept. 4, 1979.

Ethel C. Radzewicz et al., A-30866 (Jan. 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Judgment for defendant, Oct. 30, 1969; dismissed, Nov. 17, 1970.

Ram Petroleums, Inc. & Ramoco, Inc., 37 IBLA 184 (1978)

Ram Petroleums, Inc. v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing & Douglas E. Henriques, Administrative Judges of the IBLA, Civil No R-79-0005, D. Nev. Rev'd, Oct. 24, 1979; appeal filed, Dec. 21, 1979

Ramoco, Inc. & Ram Petroleums, Inc. v. Cecil Andrus, Secretary of the Interior, Edward W. Stuebing & Douglas E. Henriques, Admin. Judges of IBLA & L. Pollick, Chief Minerals Sec., Utah State Office of BLM, Civil No. C-79-0007, D. Utah. Judgment for defendants, Nov. 14, 1979; appeal filed Jan. 10, 1980.

Estate of John S. Ramsey (Wap Tose Note) (Nez Perce Allottee No. 853, Deceased), 81 I.D. 298 (1974)

Clara Ramsey Scott v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 3-74-39, D. Idaho. Dismissed with prejudice, Aug. 11, 1975; no appeal.

Ray D. Bolander Co., 72 I.D. 449 (1965)

Ray D. Bolander Co. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, Dec. 13, 1968; subsequent Contract Officer's dec., Dec. 3, 1969; interim dec., Dec. 2, 1969; Order to Stay Proceedings until Mar. 31, 1970; dismissed with prejudice, Aug. 3, 1970.

Estate of Elgin Red Elk, IA-1230 (Nov. 13, 1964)

Bert Taunah et al. v. Stewart Udall, Civil No. 65-82, W.D. Okla. Judgment for plaintiff, Apr. 27, 1967; rev'd & remanded, 398 F.2d 795 (10th Cir. 1968); no petition.

Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326; 79 I.D. 621 (1972)

George Reed, Sr. v. Rogers Morton et al., Civil No. 1105, D. Mont. Dismissed June 14, 1973; no appeal.

Reichhold Energy Corp., 40 IBLA 134 (1979)

Reichhold Energy Corp. v. Cecil D. Andrus, Civil No. 79-1274. Suit pending.

Reliable Coal Corp., 1 IBMA 97; 79 I.D. 139 (1972)

Reliable Coal Corp. v. Rogers C. B. Morton, Secretary of the Interior et al., No. 72-1477, United States Court of Appeals, 4th Cir. Board's decision aff'd, 478 F.2d 257 (4th Cir. 1973).

Republic Steel Corp., 82 I.D. 607 (1975)

Republic Steel Corp. v. Interior Board of Mine Operations Appeals, No. 76-1041, United States Ct. of Appeals, D.C. Cir. Rev'd & remanded, Feb. 22, 1978.

R. G. Brown, Jr. & Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr. et al. v. U.S., Ct. Cl. No. 373-63. Judgment for plaintiff, Apr. 6, 1965; no appeal.

Richfield Oil Corp., 62 I.D. 269 (1955)

Richfield Oil Corp. v. Fred A. Seaton, Civil No. 3820-55. Dismissed without prejudice, Mar. 6, 1958; no appeal.

Mark B. Ringstad et al., Inlet Oil Corp. et al., Robert L. Lawler et al., A-31111, A-31115, A-31134, A-31118 (Mar. 17, 1970)

Robert Lawler et al. v. Walter J. Hickel, Civil No. F-14-70, D. Alaska.

Inlet Oil Corp. & Raymond J. Ellis v. Walter J. Hickel, Civil No. A-48-70, D. Alaska. Stipulated dismissal without prejudice, Aug. 11, 1970.

Actions consolidated, June 26, 1970. Judgment for defendant, Feb. 22, 1972; no appeal.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965), reconsideration denied by letter decision dated June 23, 1967, by the Under Secretary.

Thomas M. Bunn v. Stewart L. Udall, Civil No. 2615-65. Remanded, June 28, 1966.

Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971), 2 IBIA 33, 80 I.D. 390 (1973)

Oneta Lamb Robedeaux et al. v. Rogers C. B. Morton, Civil No. 71-646, D. Okla. Dismissed, Jan. 11, 1973.

Houston Bus Hill v. Rogers C. B. Morton, Civil No. 72-376, W.D. Okla. Judgment for plaintiff, Oct. 29, 1973; amended judgment for plaintiff, Nov. 12, 1973; appeal dismissed, June 28, 1974.

Houston Bus Hill & Thurman S. Hurst v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-528-B, W.D. Okla. Judgment for plaintiff, Apr. 30, 1975; corrected judgment, May 2, 1975; per curiam dec., vacated & remanded, Oct. 2, 1975; judgment for plaintiff, Dec. 1, 1975.

Evelyn R. Robertson et al., Duncan Miller, A-29251 (Mar. 21, 1963) (see Duncan Miller, 20 IBLA 1 (1975))

Duncan Miller v. Stewart L. Udall, Civil No. 1066-63. Judgment for defendant, Mar. 13, 1964; aff'd, 349 F.2d 193 (1965); cert. denied, 385 U.S. 929 (1966); rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil No. A-37-63, D. Alaska. Dismissed with prejudice, Sept. 7, 1965; no appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil No. 1561-63. Judgment for defendant, Apr. 4, 1964; aff'd, 349 F.2d 195 (1965); no petition.

Estate of Clark Joseph Robinson, 7 IBIA 74; 85 I.D. 294 (1978)

Rene Robinson, by & through her Guardian Ad Litem, Nancy Clifford v. Cecil Andrus, Secretary of the Interior, Gretchen Robinson & Trixi Lynn Robinson Harris, Civil No. CIV-78-5097, D.S.D. Suit pending.

George Rodda, Jr., 27 IBLA 186 (1976), 37 IBLA 189 (1978)

Norman Lewis McBride, Assignor & George Rodda, Jr., Assignee v. Secretary of the Interior, Roy Maggart, an Individual, Eldon J. Fairbanks, an Individual, Civil No. CIV 79-96 TUC-MAR, D. Ariz. Suit pending.

Rosebud Coal Sales Co., 37 IBLA 251; 85 I.D. 396 (1978)

Rosebud Coal Sales Co. v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Director, Bureau of Land Management, & Maria B. Bohl, Chief, Land & Mining, Bureau of Land Management, Wyo., Civil No. C78-261, D. Wyo. Judgment for plaintiff, Oct. 17, 1979. No appeal.

Richard W. Rowe, Daniel Gaudiane, 82 I.D. 174 (1975)

Richard W. Rowe, Daniel Gaudiane v. Stanley K. Hathaway, in his official capacity as Secretary of the Interior, Civil No. 75-1152. Judgment for defendant, July 29, 1976.

Frank Roybal, Jr. v. U.S. Steel Corp., 7 IBMA 238 (1977)

Frank Roybal, Jr. v. Cecil D. Andrus, No. 77-1307, United States Ct. of Appeals, D.C. Cir. Suit pending.

Edgar Rundle, A-29593 (Aug. 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil No. 191-65. Judgment for defendant, Sept. 22, 1965; aff'd, 379 F.2d 112 (1967); cert. denied, 389 U.S. 845 (1967).

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962); no appeal.

Louise Safarik, A-28307 et al. (Apr. 22, 1960)

John J. King v. Stewart L. Udall, Civil No. 3903-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Louise Safarik et al., A-28562 et al. (Jan. 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil No. 1081-61. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil No. 1202-61. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Rune E. S. Safve, 13 IBLA 212 (1973)

Rune E. S. Safve v. Secretary of the Interior, Interior Board of Land Appeals, Dir., Bureau of Land Management, State Dir., Alaska, Bureau of Land Mgmt., Civil No. A-173-73 CIV, D. Alaska. Dismissed, Mar. 4, 1975; reinstated by court order, Apr. 9, 1975; remanded to the Bureau of Land Management for proceedings, Mar. 19, 1976.

Louis Samuel et al., 8 IBLA 268 (1972)

Charles M. Goad v. U.S. & Rogers Morton, Secretary of the Interior, Civil No. 9948, D.N.M. Dismissed with prejudice, Jan. 16, 1974.

Joseph & Jean Maisano v. Rogers C. B. Morton, Secretary of the Interior, Bureau of Land Mgmt., & Board of Land Appeals, Civil No. 39720, E.D. Mich. Dismissed, Oct. 12, 1973 (opinion); no appeal.

Gordon W. & Alleyne J. Laatz v. Rogers C. B. Morton et al., Civil No. 03266, E.D. Mich. Dismissed, Feb. 20, 1975 (opinion).

Louis Samuel v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CV-74-1112-EC, C.D. Cal. Dismissed with prejudice, Aug. 26, 1974; no appeal.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil No. 105-63. Judgment for defendant, 243 F. Supp. 672 (1965); aff'd, sub nom. S. Jack Hinton et al. v. Stewart L. Udall, 364 F.2d 676 (1966); cert. denied, 385 U.S. 878 (1966); supplemented by M-36767, Nov. 1, 1967.

B. F. Sandoval, Jr., A-29975 (June 12, 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil No. 5779, D.N.M. Judgment for plaintiff, May 11, 1965; appeal dismissed Jan. 12, 1966; order vacating prior judgment issued Jan. 28, 1966.

Santa Fe Sand & Gravel Co., A-30657 (Apr. 25, 1967)

Santa Fe Sand & Gravel Co. v. Boyd L. Rasmussen et al., Civil No. 7135, D.N.M. Summary judgment for defendant, May 28, 1968; no appeal.

Kenneth F. Santor, 13 IBLA 208 (1973)

Kenneth F. Santor v. Rogers C. B. Morton, individually & as Secretary of the Interior, Daniel P. Baker, individually & as Dir. for the State of Wyo., Bureau of Land Mgmt., & Glenna M. Lane, individually & as Chief, O&G Section, Land Ofc., Wyo., Civil No. 5949, D. Wyo. Dismissed, Nov. 15, 1974 (opinion); no appeal.

John W. Savage, 6 IBLA 253 (1972)

Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Rogers C. B. Morton, Civil No. C-4361, D. Colo. Order holding matter in abeyance until 60 days after all appeals are completed in Oil Shale Corp., supra, filed June 3, 1974.

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (Aug. 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil No. 63-484, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil No. 3912-60. Judgment for defendant, Apr. 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (Jan. 8, 1964). Reconsideration denied, Mar. 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966); no appeal.

Charles Schraier, Robert Schulein, et al., A-30814, A-30816 (Nov. 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, Oct. 31, 1968; aff'd, 419 F.2d 663 (1969); petition for rehearing en banc denied, Oct. 8, 1969; no petition.

Joseph M. Schuck, A-28603 (Aug. 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, Dec. 15, 1961; no appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil No. 1402 Tuc., D. Ariz. Complaint dismissed, Jan. 30, 1962; no appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil No. 1402 Tuc., D. Ariz. Judgment for defendant, Mar. 19, 1962; no appeal.

Seal and Co., 68 I.D. 94 (1961)

Seal & Co. v. U.S., Ct. Cl. 274-62. Judgment for plaintiff, Jan. 31, 1964; no appeal.

Administrative Appeal of Sessions, Inc. (A Cal. Corp.) v. Vyola Olinger Ortner (Lessor), Lease No. PSL-33, Joseph Patrick Patencio (Lessor), Lease No. PSL-36, Larry Olinger (Lessor), Lease No. PSL-41, 81 I.D. 651 (1974)

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3589 LTL, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3591 MML, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

Sessions, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3590 FW, C.D. Cal. Dismissed with prejudice, Jan. 26, 1976.

John J. Sexton, 15 IBLA 69 (1974), 20 IBLA 187 (on reconsideration)

John J. Sexton v. U.S., Rogers C. B. Morton as the Secretary of the Interior, et al., Civil No. F-74-6, D. Alaska. Dismissed, Jan. 5, 1977.

William D. Sexton et al., 9 IBLA 316 (1973), R. C. Bailey et al., 7 IBLA 266 (1972), R. C. Bailey & C. Burglin, 10 IBLA 281 (1973), Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973), Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)

C. Burglin & William D. Sexton v. Rogers C. B. Morton et al., Civil No. F-9-73, D. Alaska.

Continued

C. Burglin & R. C. Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-15-73, D. Alaska.

C. Burglin & Helen Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-19-73, D. Alaska.

C. Burglin, Earnest G. Carter, Dora A. Carter, & Michael F. Scanlan v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. F-21-73, D. Alaska.

Actions consolidated by order dated July 23, 1974. Judgment for defendant, Aug. 5, 1974; aff'd, 527 F.2d 486 (9th Cir. 1976); cert. denied, 425 U.S. 973 (1976).

Steve Shapiro v. Bishop Coal Co., 83 I.D. 59 (1976)

Bishop Coal Co. v. Thomas S. Kleppe, No. 76-1368, United States Ct. of Appeals, 4th Cir. Suit pending.

John W. Shaw, A-29143 (Apr. 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Ore. Aff'd, 264 F. Supp. 390 (1967); appeal docketed Mar. 13, 1967; appeal dismissed.

Michael Shearn, 24 IBLA 259 (1976)

Michael Shern v. Thomas S. Kleppe, Secretary of the Interior & Arthur W. Zimmerman, Director of the New Mexico State Office of the Bureau of Land Management, Civil No. CIV-76-338-P, D.N.M. Judgment for defendant, Feb. 22, 1977; aff'd, Sept. 17, 1977.

Shell Oil Co., A-30575 (Oct. 31, 1966), Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulated dismissal Aug. 19, 1968.

Estate of Albin (Alvin) Shemany, 7 IBIA 70 (1978)

Edward, Clara & Alice Longhat v. Cecil Andrus, Secretary of the Interior, Civil No. CIV 78-0929-D, W.D. Okla. Judgment for defendant, Dec. 31, 1979; appeal filed Jan. 21, 1980.

Sinclair Oil & Gas Co., 75 I.D. 155 (1968)

Sinclair Oil & Gas Co. v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Judgment for defendant, sub nom. Atlantic Richfield Co. v. Walter J. Hickel, 303 F. Supp. 724 (1969); aff'd, 432 F.2d 587 (10th Cir. 1970); no petition.

Charles T. Sink, 82 I.D. 535 (1975)

Charles T. Sink v. Thomas S. Kleppe, Secretary of the Interior - Mining Enforcement & Safety Administration (MESA), No. 75-1292, United States Ct. of Appeals, 4th Cir. Vacated without prejudice to plaintiff's rights, 529 F.2d 601 (4th Cir. 1975).

Skelly Oil Co., 16 IBLA 264 (1974)

Skelly Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-411, D.N.M. Judgment for plaintiff, Aug. 7, 1975 (opinion); no appeal.

Dorothy Smith, Keith C. Hayes, 44 IBLA 25 (1979)

Karen Hayes, Administratrix of the Estate of Keith C. Hayes, Deceased; Dorothy Smith v. Cecil Andrus, Secretary of the Interior, Civil No. C-LV-79-369-HEC, D. Nev. Suit pending.

Eldon L. Smith, A-30944 (Oct. 15, 1968)

Eldon L. Smith v. Walter J. Hickel, Civil No. 69-245, D. Ariz. Judgment for defendant, Feb. 3, 1970.

James W. Smith, 34 IBLA 146 (1978)

James W. Smith v. U.S., Cecil Andrus, Secretary of the Interior, Frank Gregg, Dir. BLM, Edward L. Hastey, as Cal. State Dir., BLM, Civil No. 79-0042-E, S.D. Cal. Suit pending.

L. B. Smith et al., A-30447 (Oct. 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967; no appeal.

Stanley C. Soho, A-28135 (Aug. 19, 1959), A-28135 Supp. (July 17, 1961), Supplemented by decision dated Feb. 1, 1963, by Director, Bureau of Land Management, approved by the Secretary Mar. 18, 1963

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil No. 1648 Tuc., D. Ariz. Judgment for defendant, Sept. 3, 1963; aff'd, 336 F.2d 706 (9th Cir. 1964); cert. denied, 381 U.S. 904 (1965).

Stanley C. Soho et al., A-28175 (Apr. 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, Jan. 17, 1961; no appeal.

Walter M. Sorensen, 32 IBLA 345 (1977)

Walter M. Sorensen v. Cecil D. Andrus, Secretary of the Interior, & Daniel P. Baker, State Director, Bureau of Land Management, Civil No. C77-250, D. Wyo. Aff'd, Sept. 12, 1978.

Suits for Judicial Review

Southern Pacific Co., 76 I.D. 1 (1969)

Southern Pacific Co. v. Walter J. Hickel, Secretary of the Interior, Civil No. S-1274, D. Cal. Judgment for defendant, Dec. 2, 1970 (opinion); no appeal.

Southern Pacific Co., Louis G. Wedekind, 77 I.D. 177 (1970), 20 IBLA 365 (1975)

George C. Laden, Louis Wedekind, Mrs. Vern Lear, Mrs. Arda Fritz, & Helen Laden Wagner, heirs of George H. Wedekind, Deceased v. Rogers C. B. Morton et al., Civil No. R-2858, D. Nev. On June 20, 1974, remanded for further agency proceedings as originally ordered in 77 I.D. 177; Dist. Ct. reserves jurisdiction; supplemental complaint filed, Aug. 1, 1975; judgment for defendant, Nov. 29, 1976; appeal filed Jan. 27, 1977.

Southport Land & Commercial Co., Sacramento 075330 (Jan. 15, 1964)

Southport Land & Commercial Co. v. Stewart L. Udall et al., Civil No. 42365, N.D. Cal. Dismissed as to defendant Stewart Udall, 244 F. Supp. 172 (1965); aff'd, 371 F.2d 526 (9th Cir. 1967); no petition.

Southwest Welding & Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Judgment for plaintiff, Jan. 14, 1970; appeal dismissed, Apr. 6, 1970.

Southwestern Petroleum Corp. et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 5773, D.N.M. Judgment for defendant, Mar. 8, 1965; aff'd, 361 F.2d 650 (10th Cir. 1966); no petition.

Standard Oil Co. of California et al., 76 I.D. 271 (1969)

Standard Oil Co. of California v. Walter J. Hickel et al., Civil No. A-159-69, D. Alaska. Judgment for plaintiff, 317 F. Supp. 1192 (1970); aff'd, sub nom. Standard Oil Co. of Cal. v. Rogers C. B. Morton et al., 450 F.2d 493 (9th Cir. 1971); no petition.

Standard Oil Co. of Texas, 71 I.D. 257 (1964)

California Oil Co. v. Secretary of the Interior, Civil No. 5729, D.N.M. Judgment for plaintiff, Jan. 21, 1965; no appeal.

Starling Brokers et al., 6 IBLA 237 (1972)

Hillin L. Arnold et al. v. Rogers C. B. Morton et al., Civil No. A-157-72 Civ., D. Alaska. Judgment for defendant, Mar. 20, 1974; rev'd & remanded, 529 F.2d 1101 (9th Cir. 1976).

Ross Stegman, A-30812 (Nov. 21, 1967), U.S. v. Adrian Edwards, 9 IBLA 197 (1973)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Remanded to Hearing Examiner for taking of further evidence, Dec. 12, 1969.

Adrian Edwards, Trustee for Ross Stegman, & real party in interest v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-58-PCT-CAM, D. Ariz. Judgment for plaintiff, Sept. 10, 1975; rev'd, Oct. 26, 1978.

Billy Stewart, N.M. 4200, etc., approved by the Secretary, May 2, 1969.

D. L. Hannifin v. Walter J. Hickel et al., Civil No. 8074, D.N.M. Judgment for defendant, Jan. 6, 1970; remanded, May 25, 1970; judgment for defendant, May 28, 1970; aff'd, 444 F.2d 200 (10th Cir. 1971); no petition.

Joe Stewart, 33 IBLA 225 (1977)

Joe Stewart v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-1038, D. Idaho. Suit pending.

Elaine S. Stickelman, 9 IBLA 327 (1973)

Elaine S. Stickelman v. U.S. & Dept. of the Interior, et al., Civil No. LV-2112, D. Nev. Judgment for defendant Aug. 29, 1975; amended order judgment for defendant, Sept. 4, 1975.

Omar Stratman, 16 IBLA 222 (1974)

Omar Stratman v. The Department of the Interior, Bureau of Land Management, Civil No. A74-103, D. Alaska. Remanded to the Department, May 6, 1976; appeal filed, June 30, 1976.

Florence Emily Tagala v. Amanda Nellie Ruth Price, A-30715 (Nov. 10, 1966), Florence Emily Tagala v. Norman C. Gorsuch, Special Administrator of the Estate of Amanda Price, A-31241 (Jan. 9, 1970)

Amanda Price v. Udall, Civil No. 33-67, D. Alaska. Judgment for plaintiff, 280 F. Supp. 393 (1968); remanded to Bureau of Land Management, 411 F.2d 589 (9th Cir. 1969); no petition.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman et al. v. Stewart L. Udall, Civil No. 1852-62. Judgment for defendant, Nov. 1, 1962 (opinion); rev'd, 324 F.2d 411 (1963); cert. granted, 376 U.S. 961 (1964); Dist. Ct. aff'd, 380 U.S. 1 (1965); rehearing denied, 380 U.S. 989 (1965).

Texaco, Inc., 75 I.D. 8 (1968)

Texaco Inc., a Corp. v. Secretary of the Interior, Civil No. 446-68. Judgment for plaintiff, 295 F. Supp. 1297 (1969); aff'd in part & remanded, 437 F.2d 636 (1970); aff'd in part & remanded, July 19, 1972.

Texas Construction Co., 64 I.D. 97 (1957), reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. U.S., Ct. Cl. No. 224-58. Stipulated judgment for plaintiff, Dec. 14, 1961.

Estate of Tim Tieyah, 7 IBIA 234, Oct. 17, 1979

Marie Tieyan Carr v. Cecil Andrus, Secretary of the Interior, Civil No. CIV 79-1300-D, D. Okla. Suit pending.

Albert Thomas et ux. (Contestees) v. Sam A. DeVilbiss et ux. (Contestees), 10 IBLA 56 (1973)

Albert & Ellora Thomas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-139-TUC-WCF, D. Ariz. Judgment for defendant, 408 F. Supp. 1361 (1976); aff'd, 552 F.2d 871 (9th Cir. 1977).

Estate of John Thomas, Deceased Cayuse Allottee No. 223 & Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil No. 859-581. Judgment for defendant, Sept. 18, 1958; aff'd, 270 F.2d 319 (1959); cert. denied, 364 U.S. 814 (1960); rehearing denied, 364 U.S. 906 (1960).

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil No. 5343, D.N.M. Dismissed with prejudice, June 25, 1963.

See also:

Thor-Westcliffe Development, Inc. v. Stewart L. Udall et al., Civil No. 2406-61. Judgment for defendant, Mar. 22, 1962; aff'd, 314 F.2d 257 (1963); cert. denied, 373 U.S. 951 (1963).

Richard K. Todd et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion); aff'd, 350 F.2d 748 (1965); cert. denied, 383 U.S. 912 (1966).

Atwood et al. v. Stewart L. Udall, Civil Nos. 293-62 - 299-62, incl. Judgment for defendant, Aug. 2, 1962; aff'd, 350 F.2d 748 (1965); no petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, Sept. 17, 1963; no appeal.

Appeal of Toke Cleaners, 81 I.D. 258 (1974)

Thom Properties, Inc., d/b/a Toke Cleaners & Launderers v. U.S., Department of the Interior, Bureau of Indian Affairs, Civil No. A3-74-99, D.N.D. Stipulation for dismissal & order dismissing case, June 16, 1975.

Estate of Phillip Tooisgah, 4 IBIA 189; 82 I.D. 541 (1975)

Jonathan Morris & Velma Tooisgah v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0037-D, W.D. Okla. Suit pending.

Tree Land Nursery, Inc., IBCA-436 (Oct. 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Judgment for plaintiff, May 13, 1969.

Tyee Construction Co., IBCA-112 & 113 (Apr. 30, 1958)

Tyee Construction Co. v. U.S., Ct. Cl. No. 312-60. Judgment for defendant, June 1, 1962; no appeal.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968), 76 I.D. 69 (1969)

The Superior Oil Co. et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968, modified, July 31, 1968; aff'd, 409 F.2d 1115 (1969); dismissed as moot, June 4, 1969; no petition.

Union Oil Co. of California, 71 I.D. 287 (1964)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 2595-64. Judgment for defendant, Dec. 27, 1965; no appeal.

Union Oil Co. of California et al., 71 I.D. 169 (1964), 72 I.D. 313 (1965)

Penelope Chase Brown et al. v. Stewart Udall, Civil No. 9202, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.

Continued

Equity Oil Co. v. *Stewart L. Udall*, Civil No. 9462, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.

Gabbs Exploration Co. v. *Stewart L. Udall*, Civil No. 9464, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.

Harlan H. Hugg et al. v. *Stewart L. Udall*, Civil No. 9252, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.

Barnette T. Napier et al. v. *Secretary of the Interior*, Civil No. 8691, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); *cert. granted*, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing *en banc* denied; *cert. denied*, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.

John W. Savage v. *Stewart L. Udall*, Civil No. 9458, D. Colo. Order to Close Files and Stay Proceedings, Mar. 25, 1967.

The Oil Shale Corp. et al. v. *Secretary of the Interior*, Civil No. 8680, D. Colo. Judgment for plaintiff, 261 F. Supp 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); *cert. granted*, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing *en banc* denied; *cert. denied*, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.

The Oil Shale Corp. et al. v. *Stewart L. Udall*, Civil No. 9465, D. Colo. Order to Close Files & Stay Proceedings, Mar. 25, 1967.

Joseph B. Umpleby et al. v. *Stewart L. Udall*, Civil No. 8685, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd, 406 F.2d 759 (10th Cir. 1969); *cert. granted*, 396 U.S. 817 (1969); rev'd & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., Mar. 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, Sept. 22, 1975; petition for rehearing *en banc* denied; *cert. denied*, June 21, 1976; remanded to the Dept. for further proceedings, Jan. 17, 1977.

Union Oil Co. of California, a Corp. v. *Stewart L. Udall*, Civil No. 9461, D. Colo. Order to Close Files & Stay Proceedings, Mar. 25, 1967.

Union Oil Co. of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Co. of California v. *Stewart L. Udall*, Civil No. 3042-58. Judgment for defendant, May 2, 1960 (opinion); aff'd, 289 F.2d 790 (1961); no petition.

Union Pacific R.R., 72 I.D. 76 (1965)

The State of Wyoming & Gulf Oil Corp. v. *Stewart L. Udall, etc.*, Civil No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966); aff'd, 379 F.2d 635 (10th Cir. 1967); *cert. denied*, 389 U.S. 985 (1967).

United Mine Workers of America v. *Inland Steel Co.*, 83 I.D. 87 (1976)

United Mine Workers of America v. *Thomas S. Kleppe*, No. 76-1377, United States Ct. of Appeals, 7th Cir. Board's decision aff'd, 561 F.2d 1258 (7th Cir. 1977).

United Mine Workers of America, Local Union No. 1993 v. *Consolidation Coal Co.*, 84 I.D. 254 (1977)

Local Union No. 1993, United Mine Workers of America v. *Cecil D. Andrus*, No. 77-1582, United States Ct. of Appeals, D.C. Cir. Suit pending.

U.S. v. *Alonzo A. Adams et al.*, 64 I.D. 221 (1957), A-27364 (July 1, 1957)

Alonzo A. Adams et al. v. *Paul B. Witmer et al.*, Civil No. 1222-57-Y, S.D. Cal. Complaint dismissed, Nov. 27, 1957 (opinion); rev'd & remanded, 271 F.2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F.2d 37 (9th Cir. 1959)

U.S. v. *Alonzo Adams*, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, Jan. 29, 1962 (opinion); judgment modified, 318 F.2d 861 (9th Cir. 1963); no petition.

U.S. v. *Ken & Kenneth D. Alexander*, 17 IBLA 421 (1974)

Ken & Kenneth D. Alexander v. *The Secretary of the Interior*, Civil No. 75-465, D. Ore. Judgment for defendant, July 5, 1978.

U.S. v. *A. F. Anderson et al.*, 15 IBLA 123 (1974)

A. F. Anderson, Wilton Dale, William F. Mackey, Arthur Roberts, Kenneth Roberts, Hugh Scott, Ester Desmarais, Louis D. Desmarais, Ernest L. Meunier, et al. v. *Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals*, Civil No. C74-151, D. Wyo. Judgment for defendant, Nov. 7, 1975.

Consolidated with Walter H. Burkhardt et al. v. *Rogers C. B. Morton et al.*, Civil No. C74-152, D. Wyo., for purposes of appeal by order of Nov. 19, 1975; dismissed, Nov. 28, 1975.

U.S. v. *Arizona Exploration Co. et al.*, A-28876 (June 22, 1962)

Blaine J. Lord et al. v. *Roy T. Helmandoller et al.*, Civil No. 987-63. Judgment for defendants, Sept. 30, 1963; appeal dismissed, 348 F.2d 780 (1965); *cert. denied*, 383 U.S. 928 (1966); *rehearing denied*, 384 U.S. 947 (1966).

Suits for Judicial Review

U.S. v. Melton E. Baker, 23 IBLA 319 (1976)

Melton E. Baker v. U.S., Thomas Kleppe, Individually & as Secretary of the Interior & Stanley Gurnewald, Individually & as District Ranger of the Forest Service of the U.S. Dept. of Agriculture, Civil No. CIV 76-408 PCT WPC, D. Ariz. Complaint dismissed, Apr. 25, 1977; appeal filed June 21, 1977.

U.S. v. E. A. & Esther Barrows, 76 I.D. 299 (1969)

Esther Barrows, as an individual & as Executrix of the Last Will of E. A. Barrows, deceased v. Walter J. Hickel, Civil No. 70-215-CC, C.D. Cal. Judgment for defendant, Apr. 20, 1970; aff'd, 447 F.2d 80 (9th Cir. 1971).

U.S. v. A. O. Bartell, 31 IBLA 47 (1977)

A. O. Bartell v. Cecil Andrus, Secretary of the Interior, Civil No. 77-667, D. Ore. Suit pending.

U.S. v. Charles Thomas Beaird, 31 IBLA 203 (1977)

Charles Thomas Beaird v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F-77-31, D. Alaska. Suit pending.

U.S. v. J. L. Block, 80 I.D. 571 (1973)

J. L. Block v. Rogers Morton, Secretary of the Interior, Civil No. LV-74-9, BRT, D. Nev. Judgment for defendant, June 6, 1975; rev'd & remanded with instructions to remand to the Secretary of the Interior, Mar. 29, 1977; no petition.

U.S. v. Blue Bell Gold Mining Co. et al., 17 IBLA 182 (1974)

Blue Bell Gold Mining Co. v. Rogers C. B. Morton, Secretary of the Interior et al., Civil No. C74-698 S, W.D. Wash. Judgment for defendant, Sept. 18, 1975; no appeal.

U.S. v. Catherine R. Blythe, 16 IBLA 94 (1975)

Catherine R. Blythe v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV 75-750 B, D.N.M. Dismissed, Feb. 28, 1977; aff'd, Nov. 16, 1977.

U.S. v. Lloyd W. Booth, 76 I.D. 73 (1969)

Lloyd W. Booth v. Walter J. Hickel, Civil No. 42-69, D. Alaska. Judgment for defendant, June 30, 1970; no appeal.

U.S. v. R. B. Borders, A-28624 (Oct. 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, D. Nev. Judgment for defendant, Aug. 19, 1964 (opinion); no appeal.

U.S. v. Jack Zemmy Boyd, Jr., 39 IBLA 321 (1979)

Jack Zemmy Boyd, Jr. v. Cecil D. Andrus, Secretary of the Interior, Civil No. A79-322, D. Alaska. Judgment for defendant, Mar. 14, 1980; appeal filed Apr. 9, 1980.

U.S. v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (1969), reconsideration denied, Jan. 22, 1970.

Alice A. & Carrie H. Boyle v. Rogers C. B. Morton, Secretary of the Interior, Civil No. Civ-71-491 Phx WEC, D. Ariz. Judgment for plaintiff, May 4, 1972; rev'd & remanded, 519 F.2d 551 (9th Cir. 1975); cert. denied, 423 U.S. 1033 (1975).

U.S. v. R. W. Brubaker et al., A-30636 (July 24, 1968); 9 IBLA 281, 80 I.D. 261 (1973)

R. W. Brubaker, a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker, & William J. Mann, a/k/a W. J. Mann v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-1228 EC, C.D. Cal. Dismissed with prejudice, Aug. 13, 1973; aff'd, 500 F.2d 200 (9th Cir. 1974); no petition.

U.S. v. Joe W. Bryant, 25 IBLA 247 (1976)

Joe E. Bryant v. Secretary of the Interior, Civil No. A76-84, D. Alaska. Remanded to the Agency for final consideration on the merits, Jan. 5, 1978.

U.S. v. Henrietta & Andrew Julius Bunkowski, 5 IBLA 102; 79 I.D. 43 (1972)

Henrietta & Andrew Julius Bunkowski v. L. Paul Applegate, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. R-76-182-BRT, D. Nev. Suit pending.

U.S. v. Calhoun & Howell of Oregon, Ltd., U.S. v. Lee Temple, A-31004 (Aug. 29, 1969)

Calhoun & Howell of Oregon Ltd. v. Walter J. Hickel, Civil No. 70-155, D. Ore. Judgment for defendant, Sept. 24, 1970; no appeal.

U.S. v. John C. Chapman et al., A-30581 (July 16, 1968)

John C. Chapman et al. v. U.S., Civil No. 69-12 Pct., D. Ariz. Judgment for defendant, Jan. 18, 1972; no appeal.

U.S. v. Charleston Stone Products, Inc., 9 IBLA 94 (1973)

Charleston Stone Products Co. v. Rogers Morton, Secretary of the Interior, Civil No. LV-2039-BRT, D. Nev. Vacated & remanded to the Dept. for further proceedings, Nov. 7, 1974 (opinion); aff'd & remanded, 553 F.2d 1209 (9th Cir. 1977); rev'd & remanded, 436 U.S. 604 (1978).

U.S. v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. U.S., Civil No. C-164-61, D. Utah. Complaint dismissed, Jan. 9, 1962; no appeal.

Nick Chournos et al. v. U.S. et al., Civil No. C-238-62, D. Utah. Dismissed, June 28, 1963; aff'd, 335 F.2d 918 (10th Cir. 1964); no petition.

U.S. v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil No. 191-59. Judgment for defendant, Apr. 4, 1960; no appeal.

U.S. v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (1971)

Clear Gravel Enterprises, Inc. v. Nolan Keil, State Dir., Bureau of Land Management, State of Nevada, & Rolla Chandler, Chief Div. of Technical Services, Bureau of Land Management, Reno, Nevada, Civil No. LV-1654, D. Nev. Judgment for defendant, May 4, 1972; aff'd, Oct. 9, 1974; rehearing denied, Jan. 13, 1975; cert. denied, Apr. 21, 1975.

U.S. v. J. R. Clements, A-27751 (Dec. 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil No. 560-59. Judgment for defendant, Jan. 13, 1960; no appeal.

U.S. v. Elsie Cody, 1 IBLA 92 (1970)

Elsie Cody v. Walter J. Hickel, Civil No. 1-70-125, D. Idaho. Remanded to the Secretary of the Interior for taking of additional evidence, Dec. 6, 1971; appeal withdrawn, Mar. 10, 1972.

U.S. v. Alfred Coleman, A-28557 (Mar. 27, 1962)

U.S. v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, Feb. 25, 1965 (opinion); remanded, 363 F.2d 190 (9th Cir. 1966); aff'd, 379 F.2d 555 (9th Cir. 1967); cert. granted, 389 U.S. 970 (1967); rev'd & remanded to 9th Cir., 390 U.S. 599 (1968); rehearing denied, 391 U.S. 961 (1968); aff'd, 405 F.2d 72 (9th Cir. 1968); cert. denied, 394 U.S. 907 (1969).

U.S. v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil No. 65-581, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); aff'd, 399 F.2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

U.S. v. Jesse W. Crawford, A-30820 (Jan. 29, 1968)

Jesse W. Crawford v. Stewart L. Udall, Civil No. 6969 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971); no petition.

U.S. v. Jerry L. Crow, 28 IBLA 345 (1977)

Jerry L. Crow v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F77-12-CIV, D. Alaska. Judgment for defendant, June 23, 1978.

U.S. v. Bradley F. Denham, 29 IBLA 185 (1977)

Bradley F. Denham v. Cecil Andrus, Secretary of the Interior, Civil No. CIV77-392 Phx WEC, D. Ariz. Suit pending.

U.S. v. Alvis F. Denison et al., 71 I.D. 144 (1964), 76 I.D. 233 (1969)

Marie W. Denison, individually & as executrix of the Estate of Alvis F. Denison, deceased v. Stewart L. Udall, Civil No. 963 D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Judgment for defendant, Jan. 31, 1972.

Reid Smith v. Stewart L. Udall, etc., Civil No. 1053, D. Ariz. Judgment for defendant, Jan. 31, 1972; aff'd, Feb. 1, 1974; cert. denied, Oct. 15, 1974.

U.S. v. J. S. Devenny, A-30289 (Aug. 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil No. 6283, W.D. Wash. Dismissed, June 22, 1966; no appeal.

U.S. v. Nelson E. Devine & Raymond E. Bryant, A-30435 (Apr. 28, 1965), 2 IBLA 258 (1971)

U.S. v. Raymond E. Bryant, Civil No. 9929, E.D. Cal. Remanded to Dept. for exercise of discretion, Sept. 10, 1969; decision of BLM dated Jan. 16, 1970, aff'd by the Board of Land Appeals, May 10, 1971.

U.S. v. Aloys A. & Doris E. L. Dietemann, 26 IBLA 356 (1976)

Aloys A. & Doris E. Dietemann v. Thomas S. Kleppe, Secretary of the Interior, Curtis Berklund, Director of the Bureau of Land Management, et al., Civil No. 76-3532 RMT, C.D. Cal. Summary judgment for defendant, Feb. 9, 1977; no appeal.

U.S. v. Francis Dlouhy et al., A-27668 (Sept. 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil No. 405-59. Judgment for defendant, May 3, 1960; appeal dismissed, Nov. 28, 1960.

Suits for Judicial Review

U.S. v. The Dredge Corp., A-28022 (Dec. 18, 1959)

The Dredge Corp. v. J. Russell Penny, Civil No. 396, D. Nev. Judgment for defendant, Sept. 25, 1962; remanded, 338 F.2d 456 (9th Cir. 1964); judgment for plaintiff, Aug. 8, 1966; judgment for defendants, 398 F.2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

U.S. v. The Dredge Corp., 7 IBLA 136 (1972)

The Dredge Corp. v. Rogers C. B. Morton et al., Civil No. LV-2029, D. Nev. Stipulated dismissal, Feb. 12, 1974.

U.S. v. Maurice Duvall et al., 1 IBLA 103 (1970)

Maurice Duval et al. v. Rogers C. B. Morton, Civil No. 71-684, D. Ore. Dismissed, 347 F. Supp. (1972); aff'd, Dec. 19, 1973 (opinion).

U.S. v. Elkhorn Mining Co., 2 IBLA 383 (1971)

Elkhorn Mining Co. v. Rogers Morton, Civil No. 2111, D. Mont. Judgment for defendant, Jan. 19, 1973; no appeal.

U.S. v. Ralph Fairchild, A-30803 (Jan. 19, 1968)

Minerals Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971).

U.S. v. Kathryn R. Fitzgerald, A-30973 (July 25, 1969)

Kathryn R. Fitzgerald & John Holden v. Walter J. Hickel, Civil No. 70-421-Phx., D. Ariz. Judgment for defendant, Nov. 23, 1970.

U.S. v. Harlan H. Foresyth, 15 IBLA 43 (1974), Petition for review granted by order of Oct. 30, 1975

Earl J. Brubaker, Frank Jobe, Jr. & Rexford L. Mitchell v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-W-280, D. Colo. Suit pending.

U.S. v. Everett Foster et al., 65 I.D. 1 (1958)

Everett Foster et al. v. Fred A. Seaton, Civil No. 344-58. Judgment for defendants, Dec. 5, 1958 (opinion); aff'd, 271 F.2d 836 (1959); no petition.

U.S. v. Andrew L. Freese II, 37 IBLA 7 (1978)

Andrew L. Freese II v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV 78-1314, D. Idaho. Suit pending.

U.S. v. Jack L. Gardener, 18 IBLA 175 (1974)

Jack L. Gardener v. Secretary of the Interior, Civil No. 75-1413-R, C.D. Cal. Judgment for defendant, June 16, 1975; notice of appeal filed, Aug. 8, 1975.

U.S. v. Fred & Eileen Garner, 30 IBLA 42 (1977)

Fred & Eileen Garner v. U.S. et al., Civil No. 78-0314, D. Colo. Suit pending.

U.S. v. Fred Garula, A-29948 (June 3, 1964)

Fred Garula v. Stewart L. Udall, Civil No. 8998, D. Colo. Judgment for plaintiff, 268 F. Supp. 910 (1967); rev'd, 405 F.2d 1181 (10th Cir. 1968); no petition.

U.S. v. Golden Eagle Mining Corp., A-30864 (Sept. 25, 1967)

Golden Eagle Mining Corp. v. Stewart L. Udall, Secretary of the Interior, Civil No. S-937, E.D. Cal. Dismissed for lack of prosecution, Oct. 6, 1969; no appeal.

U.S. v. Golden Grigg et al., 82 I.D. 123 (1975)

Golden T. Grigg, LeFawn Grigg, Fred Baines, Otis H. Williams, Kathryn Williams, Lovell Taylor, William A. Anderson, Saragene Smith, Thomas M. Anderson, Bonnie Anderson, Charles L. Taylor, Darlene Baines, Luann & Paul E. Hogg v. U.S., Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-75, D. Idaho. Judgment for defendant, Nov. 6, 1979.

U.S. v. Gunsight Mining Co., 5 IBLA 62 (1972)

Gunsight Mining Corp. v. Rogers C. B. Morton, Civil No. 72-92 Tuc, D. Ariz. Dismissed, Sept. 11, 1973; no appeal.

U.S. v. C. V. Hallenbeck et al., 21 IBLA 296 (1975)

Charles V. Hallenbeck, Jr. & Clyde A. Hallenbeck, as Individuals, as Trustees, & as Members of a Class v. Bureau of Reclamation, Civil No. 75-M-786, D. Colo. Judgment for defendant, Sept. 2, 1976; aff'd, 590 F.2d 852 (10th Cir. 1979).

U.S. v. Urban Harenberg et al., 11 IBLA 153 (1973)

Century Industries-Flagstaff, an Arizona Corp. (successor-in-interest to Urban, LaVaun, Sylvan L. & Beth Harenberg, & to Flagstaff Service & Materials Co., an Arizona Corp., bankrupt) v. U.S., Rogers Morton, Secretary of the Interior, et al., Civil No. 75-157 PCT WPC, D. Ariz. Suit pending.

U.S. v. Richard P. Haskins, A-30737 (Dec. 19, 1966), 3 IBLA 77 (1971)

Richard P. Haskins for Himself & as Admin. of the Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil No. 67-1815-CC, C.D. Cal. Judgment for defendant, Apr. 15, 1968; remanded to the Director, Bureau of Land Management for an exercise of discretion, Oct. 3, 1969.

U.S. v. Richard P. Haskins, Civil No. 72-246 JWC, C.D. Cal. Judgment for plaintiff, May 18, 1972 (opinion); rehearing denied, June 28, 1972; aff'd & remanded for further proceedings, Oct. 25, 1974; no petition.

U.S. v. Gerald D. Heden et al., 19 IBLA 326 (1975)

Gerald D. & Sharon A. Heden, John D. & Diane E. Prichard v. The Secretary of the Interior, Civil No. 75-543, D. Ore. Dismissed, Aug. 4, 1977; aff'd Mar. 19, 1980.

U.S. v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tysk et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967); rev'd & remanded for further proceedings, 419 F.2d 766 (9th Cir. 1969); cert. denied, 398 U.S. 950 (1970); judgment for defendant, Oct. 6, 1970.

U.S. v. Charles H. Henrikson et al., 70 I.D. 212 (1963)

Charles H. Henrikson et al. v. Stewart L. Udall et al., Civil No. 41749, N.D. Cal. Judgment for defendant, 229 F. Supp 510 (1964); aff'd, 350 F.2d 949 (9th Cir. 1965); cert. denied, 384 U.S. 940 (1966).

U.S. v. Taylor T. Hicks et al., A-30780 (Oct. 24, 1967)

Taylor T. Hicks et al. v. U.S., Stewart L. Udall, Secretary of the Interior, Civil No. Civ.-1202 Pct., D. Ariz. Judgment for defendant, Mar. 26, 1970.

U.S. v. Ernest Higbee et al., A-31063 (Apr. 1, 1970)

Ernest Higbee et al. v. Rogers C. B. Morton et al., Civil No. 1674, D. Nev. Judgment for defendant, May 5, 1972; vacated & remanded, July 22, 1974; amended, Sept. 13, 1974; vacated & remanded to the Secretary for taking of further evidence for reconsideration of the issues, Dec. 19, 1974.

U.S. v. Humboldt Placer Mining Co. & Del De Rosier, 79 I.D. 709 (1972)

Humboldt Placer Mining Co. & Del De Rosier v. Secretary of the Interior, Civil No. S-2755, E.D. Cal. Dismissed with prejudice, June 12, 1974; aff'd, 549 F.2d 622 (9th Cir. 1977); petition for cert. filed June 25, 1977.

U.S. v. Ideal Cement Co., 5 IBLA 235, 79 I.D. 117 (1972)

Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. v. Rogers C. B. Morton, Civil No. J-12-72, D. Alaska. Judgment for defendant, Feb. 25, 1974; motion to vacate judgment denied, May 6, 1974; aff'd, 542 F.2d 1364 (9th Cir. 1976).

U.S. v. Independent Quick Silver Co., 72 I.D. 367 (1965)

Independent Quick Silver Co., an Oregon Corp. v. Stewart L. Udall, Civil No. 65-590, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); appeal dismissed.

U.S. v. Leroy S. Johnson, et al., 39 IBLA 337 (1979)

Leroy S. Johnson, Joseph I. Barlow, Frederick Merril Jessop, Daniel Barlow, Edson P. Jessop, Fred M. Jessop, Dan C. Jessop & Damuel S. Barlow v. U.S., Cecil D. Andrus, Secretary of the Interior, Civil No. C-79-0486, D. Utah. Suit pending.

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)
See M. G. Johnson

U.S. v. R. B. Johnson, A-30405 (Oct. 28, 1965)

R. B. Johnson v. Stewart L. Udall, Civil No. 1071, D. Ariz. Judgment for defendant, Nov. 21, 1967; no appeal.

U.S. v. Robert N. Johnson et al., A-30828 (Jan. 29, 1968)

Robert N. Johnson et al. & Thelma A. Johnson as individ. & as Executrix of Nolan F. Fultz estate v. Stewart L. Udall, Civil No. 68-994-AAH, C.D. Cal. Judgment for plaintiff, 292 F. Supp. 738 (1968); no appeal.

U.S. v. David L. & Kathryn King, A-30217 (Dec. 29, 1964)

David L. & Kathryn King v. Bureau of Land Management, Civil No. S2765, E.D. Cal. Dismissed, Oct. 30, 1973; no appeal.

U.S. v. William C. King, 15 IBLA 210 (1974)

William C. King v. U.S., & The Secretary of the Interior, et al., Civil No. 74-151-TUC-JAW, D. Ariz. Judgment for defendant, July 10, 1975; dismissed, Jan. 7, 1977.

U.S. v. Horace J. & Elsie Marie Knowlton, A-30912 (May 21, 1968)

Elsie Marie & Horace J. Knowlton v. Walter J. Hickel, Secretary of the Interior, Civil No. C-191-69, D. Utah. Judgment for defendant, Nov. 13, 1970.

Suits for Judicial Review

U.S. v. Charles W. & Cora A. Kohl, 5 IBLA 298 (1972)

Charles W. & Cora A. Kohl v. Steve Yurich & Rogers C. B. Morton, et al., Civil No. 2155, D. Mont. Dismissed with prejudice, Jan. 17, 1973; no appeal.

U.S. v. Richard Dean Lance, 73 I.D. 218 (1966)

Richard Dean Lance v. Stewart L. Udall et al., Civil No. 1864, D. Nev. Judgment for defendant, Jan. 23, 1968; no appeal.

U.S. v. Lane Minerals, Inc., A-30497 (Mar. 28, 1966)

Lane Minerals, Inc. v. Stewart L. Udall & the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Civil No. 67-535, D. Ore. Judgment for defendant, Feb. 2, 1970.

U.S. v. Ethel Schell Larsen & Minerals Trust Corp., 9 IBLA 247 (1973)

Ethel Schell Larsen & Minerals Trust Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-119-TUC-JAW, D. Ariz. Judgment for defendant, Sept. 24, 1974; no appeal.

U.S. v. Lost Polack Mining Ass'n, 38 IBLA 101 (1978)

Lost Polack Mining & Exploration Co. v. Cecil Andrus, Secretary of the Interior, Civil No. 79-56 PHX CAM, D. Ariz. Suit pending.

U.S. v. William A. McCall & R. J. Kaltenborn, 1 IBLA 115 (1970)

William A. McCall v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-70 RDF, D. Nev. Judgment for defendant, Oct. 1, 1975.

U.S. v. William A. McCall, Sr., The Dredge Corp., Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Ass'n, Intervenor, 78 I.D. 71 (1971)

William A. McCall, Sr., The Dredge Corp. & Olaf H. Nelson v. John F. Boyles et al., Civil No. 74-68(RDF), D. Nev. Judgment for defendant, June 8, 1976.

U.S. v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21; 79 I.D. 457 (1972)

William A. McCall, Sr. & the Estate of Olaf Henry Nelson, deceased v. John S. Boyles, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. LV-76-155 RDF, D. Nev. Judgment for defendant, Nov. 4, 1977; appeal filed.

U.S. v. Kenneth McClarty, 71 I.D. 331 (1964), 76 I.D. 193 (1969)

Kenneth McClarty v. Stewart L. Udall et al., Civil No. 2116, E.D. Wash. Judgment for defendant, May 26, 1966; rev'd & remanded, 408 F.2d 907 (9th Cir. 1969); remanded to the Secretary, May 7, 1969; vacated & remanded to Bureau of Land Management, Aug. 13, 1969.

U.S. v. Charles Maher et al., 5 IBLA 209, 79 I.D. 109 (1972)

Charles Maher & L. Franklin Mader v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-72-153, D. Idaho. Dismissed without prejudice, Apr. 3, 1973.

U.S. v. Mary A. Mattey, 67 I.D. 63 (1960)

U.S. v. Edison R. Nogueira et al., Civil No. 65-220-PH, C.D. Cal. Judgment for defendant, Nov. 16, 1966; rev'd & remanded, 403 F.2d 816 (1968); no petition.

U.S. v. Alvin M. May, A-30675 (July 25, 1968)

Alvin M. May v. Stewart Udall et al., Civil No. R-2107, D. Nev. Judgment for plaintiff, Dec. 15, 1969.

U.S. v. Frank & Wanita Melluzzo, 76 I.D. 160 (1969), 32 IBLA 46 (1977)

Frank & Wanita Melluzzo v. Rogers C. B. Morton, Civil No. CIV 73-308 PHX CAM, D. Ariz. Judgment for defendant, June 19, 1974; aff'd in part & rev'd & remanded in part, 534 F.2d 860 (9th Cir. 1976); no petition.

Frank & Wanita Melluzzo v. Cecil Andrus, Secretary of the Interior, Civil No. CIV-79-282 PHX, CAM, D. Ariz. Judgment for defendant, May 20, 1980.

U.S. v. Frank & Wanita Melluzzo, et al., 76 I.D. 181 (1969); reconsideration, 1 IBLA 37, 77 I.D. 172 (1970)

WJM Mining & Development Co. et al. v. Rogers C. B. Morton, Civil No. 70-679, D. Ariz. Judgment for defendant, Dec. 8, 1971; dismissed, Feb. 4, 1974.

U.S. v. Mineral Ventures, Ltd., 80 I.D. 792 (1973)

Mineral Ventures, Ltd. v. The Secretary of the Interior, Civil No. 74-201, D. Ore. Judgment for defendant, July 10, 1975; vacated & remanded, May 3, 1977; modified amended judgment, Sept. 9, 1977.

Suits for Judicial Review

U.S. v. G. Patrick Morris et al., 82 I.D. 146 (1975)

G. Patrick Morris, Joan E. Roth, Elise L. Neeley, Lyle D. Roth, Vera M. Baltzor (formerly Vera M. Noble), Charlene S. & George R. Baltzor, Juanita M. & Nellie Mae Morris, Milo & Peggy M. Axelsen, & Farm Development Corp. v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-74, D. Idaho. Aff'd in part, rev'd in part, Dec. 20, 1976; rev'd, Nov. 16, 1978.

U.S. v. Ernest Evon Moseley, A-30971 (Dec. 13, 1967)

Ernest E. Moseley v. Udall, Civil No. 6939 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd, 442 F.2d 1030 (9th Cir. 1971); no petition.

U.S. v. G. C. (Tom) Mulkern, A-27746 (Jan. 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil No. 299, D. Nev. Judgment for defendant, Feb. 19, 1963 (opinion); aff'd, 326 F.2d 896 (9th Cir. 1964); no petition.

U.S. v. Christian F. Murer, 4 IBLA 242 (1972)

Christian F. Murer v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-3941, D. Colo. Judgment for defendant, Mar. 22, 1973 (oral opinion); no appeal.

U.S. v. National Motor Service Co., 15 IBLA 23 (1974)

National Motor Service Co., Successor to Gary K. Lloyd v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-74-41, D. Idaho. Complaint dismissed with prejudice, Feb. 24, 1976.

U.S. v. Leonard F. Nelson, IBLA 71-57 (Dec. 6, 1972) (Supp. I), 28 IBLA 314 (1977)

Leonard F. Nelson v. Rogers C. B. Morton et al., Civil No. A-3-73, D. Alaska. Dismissed with prejudice, 368 F. Supp. 692 (1974); rev'd & remanded, Jan. 14, 1976; no petition.

U.S. v. Melvin L. Nevitt, A-30030 (July 28, 1964)

U.S. v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, Nov. 28, 1966; no appeal.

U.S. v. New Jersey Zinc Co., 74 I.D. 191 (1967)

The New Jersey Zinc Corp., a Del. Corp. v. Stewart L. Udall, Civil No. 67-C-404, D. Colo. Dismissed with prejudice, Jan. 5, 1970.

U.S. v. W. G. & Eva Rose Nickol, 9 IBLA 117 (1973)

W. G. & Eva Rose Nickol v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 9995 D.N.M. Dismissed, Oct. 5, 1973; rev'd & remanded, June 18, 1974; rehearing denied, Sept. 30, 1974; remanded to the Dept. for further proceedings, Jan. 30, 1975; no appeal.

U.S. v. Lloyd O'Callaghan, Sr. et al., 79 I.D. 689 (1972), U.S. v. Lloyd O'Callaghan, Sr., Contest No. R-04845 (July 7, 1975), 29 IBLA 333 (1977)

Lloyd O'Callaghan, Sr., Individually & as Executor of the Estate of Ross O'Callaghan v. Rogers Morton et al., Civil No. 73-129-S, S.D. Cal. Aff'd in part & remanded, May 14, 1974. Judgment for defendant, May 16, 1978, aff'd, May 8, 1980.

U.S. v. Wilma L. Oldaker, A-30378 (Aug. 26, 1965)

Wilma Oldaker v. Stewart L. Udall, Civil No. A-98-65, D. Alaska. Stipulated dismissal with prejudice, Mar. 3, 1967; no appeal.

U.S. v. J. R. Osborne et al., 77 I.D. 83 (1970), 28 IBLA 13 (1976), reconsideration denied by order dated Jan. 4, 1977

J. R. Osborne, individually & on behalf of R. R. Borders et al. v. Rogers C. B. Morton et al., Civil No. 1564, D. Nev. Judgment for defendant, Mar. 1, 1972; remanded to Dist. Ct. with directions to reassess Secretary's conclusion, Feb. 22, 1974; remanded to the Dept. with orders to re-examine the issues, Dec. 3, 1974.

Bradford Mining Corp., Successor of J. R. Osborne, agent for various persons v. Cecil D. Andrus, Secretary of the Interior, Civil No. LV-77-218, RDF, D. Nev. Suit pending.

U.S. v. Pittsburgh Pacific Co., 30 IBLA 388; 84 I.D. 282 (1977)

Pittsburgh Pacific Co. v. U.S., Dept. of the Interior, Cecil Andrus, Joseph W. Goss, Anne Poindexter Lewis, Martin Ritvo, State of South Dakota, Dept. of Environmental Protection & Allen Lockner, Civil No. CIV77-5055, W.D.S.D. Suit pending.

State of South Dakota v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV 77-5058, W.D.S.D. Dismissed, Dec. 26, 1978.

U.S. v. Paul C. Poncia et al., 11 IBLA 302 (1973)

Paul C., Opal L., John C., & Dorothy Poncia v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-73-93, D. Idaho. Remanded to the Secretary of Interior for consideration, Sept. 28, 1976.

Suits for Judicial Review

U.S. v. *Richard C. Porter et al.*, A-29882 (Apr. 24, 1964)

Hal W. Eldridge et al. v. *Secretary of the Interior*, Civil No. 64-353, D. Ore. Judgment for defendant, Dec. 15, 1965 (opinion); no appeal.

U.S. v. *E. V. Pressentin et al.*, A-27495 (Apr. 2, 1958)

E. V. Pressentin v. *Fred A. Seaton*, Civil No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered July 24, 1959.

E. V. Pressentin et al. v. *Fred A. Seaton*, Civil No. 1907-59. Judgment for defendant, Jan. 15, 1960; rev'd & remanded, 284 F.2d 195 (1960); *see* A-30004, 71 I.D. 447 (1964).

U.S. v. *E. V. Pressentin & Devisees of the H. S. Martin Estate*, 71 I.D. 447 (1964)

E. V. Pressentin, Fred J. Martin, Admin. of H. A. Martin Estate v. *Stewart L. Udall & Charles Stoddard*, Civil No. 1194-65. Judgment for defendant, Mar. 19, 1969; no appeal.

U.S. v. *C. F. Pruess, Sr.*, A-28641 (Aug. 22, 1961)

C. F. Pruess, Sr. v. *Stewart L. Udall*, Civil No. 1331-62. Judgment for defendant, May 12, 1964; remanded, 359 F.2d 615 (1965); judgment for defendant, Jan. 4, 1966; per curiam dec., remanded for transfer to Dist. Ct. for Oregon. Not reported.

C. F. Pruess, Sr. v. *Stewart L. Udall*, Civil No. 67-167, D. Ore. Judgment for defendant, 286 F. Supp. 138 (1968); aff'd, 410 F.2d 750 (9th Cir. 1969); *cert. denied*, 396 U.S. 967 (1969); *rehearing denied*, 397 U.S. 1003 (1970).

U.S. v. *William D. Pulliam et al.*, 1 IBLA 143 (1970)

William D. Pulliam et al. v. *Secretary of the Interior*, Civil No. 71-649, D. Ariz. Dismissed on the merits, Mar. 29, 1973; no appeal.

U.S. v. *Chester L. Ramsey*, 29 IBLA 243 (1977)

Chester Lee Ramsey v. *Cecil Andrus, Secretary of the Interior, et al.*, Civil No. CIV S-77-348-TJM, D. Cal. Suit pending.

U.S. v. *Marvin C. Ramsey et al.*, 14 IBLA 152 (1974)

Marvin C. & Vesta Ruth Ramsey v. *The Secretary of the Interior*, Civil No. 74-192, D. Ore. Dismissed, May 1, 1975; aff'd, Mar. 22, 1977.

U.S. v. *Ramsher Mining & Engineering Co.*, 13 IBLA 268 (1973)

Ramsher Mining & Engineering Co. v. *Secretary of the Interior, Bureau of Land Management*, Civil No. CV-74-3062-WMB, C.D. Cal. Dismissed with prejudice, Feb. 11, 1975; aff'd, Oct. 15, 1976.

U.S. v. *Cecil R. Reed*, A-30354 (Sept. 29, 1965)

Cecil R. Reed v. *Stewart L. Udall et al.*, Civil No. 1784, D. Nev. Judgment for defendant, Dec. 19, 1967; aff'd, 416 F.2d 377 (9th Cir. 1969); *cert. denied*, 397 U.S. 924 (1970).

U.S. v. *George A. & Dorothy Relyea*, A-30909 (June 25, 1968)

George A. & Dorothy Relyea v. *Stewart Udall, Secretary of the Interior*, Civil No. 3-68-20, D. Idaho. Judgment for defendant, Feb. 19, 1970; no appeal.

U.S. v. *Amos D. & Lena S. Robinette*, A-31036, A-31133 (Mar. 4, 1970)

Amos D. Robinette v. *Rogers C. B. Morton et al.*, Civil No. 71-1156-WP, C.D. Cal. Complaint dismissed with prejudice, Oct. 22, 1971; appeal dismissed, Apr. 18, 1972.

U.S. v. *R. E. & Barbara J. Rodgers*, 32 IBLA 77 (1977)

R. E. & Barbara Rodgers v. *Cecil D. Andrus, Secretary of the Interior*, Civil No. 78-119, D. Ore. Suit pending.

U.S. v. *Robert A. Rukke, Registered Agent, Valumines, Inc. et al.*, 32 IBLA 155 (1977)

Robert A. Rukke, Secretary, Valumines, Inc., Milo Moore, William Soren, George Dunlap (aka George Dunlop) & Estate of Eugene Francis Dunlap (aka Gene Dunlop) v. *U.S.*, Civil No. C77-206T, D. Wash. Suit pending.

U.S. v. *Dan S. Russell*, 40 IBLA 309 (1979)

Dan S. Russell v. *John R. McGuire, Individ. & as Chief, Forest Service, DOA, Bob Berglund, Individ. & as Sec. of Agriculture, Frank Gregg, Individ. & as Dir., BLM, Cecil D. Andrus, Individ. & as Secretary of the Interior*, Civil No. 79-949, D. Ore. Suit pending.

U.S. v. *Robert B. Sainberg*, 5 IBLA 270 (1972)

Robert B. Sainberg, Rose Mary Druse, Frank Patrick Vallely, Jr., & William J. Vallely v. *Rogers C. B. Morton*, Civil No. 72-217-PCT, D. Ariz. Dismissed, 363 F. Supp. 1259 (1973); no appeal.

U.S. v. Edwin R. Saurers et al., A-30097 (July 9, 1964)

Edwin R. Saurers et al. v. Stewart L. Udall, Civil No. 6265, W.D. Wash. Judgment for defendant, July 19, 1965; no appeal.

U.S. v. Charles L. Seeley et al., A-28127 (Jan. 28, 1960)

Charles L. Seeley et al. v. Secretary of the Interior, Civil No. 3693-60 & No. 41094, N.D. Cal. Judgment for defendant, July 29, 1964; appeal dismissed, Dec. 16, 1964.

U.S. v. Ollie Mae Shearman et al., 73 I.D. 386 (1966)
See Idaho Desert Land Entries - Indian Hill Group

U.S. v. Silverton Mining & Milling Co., IBLA 70-22 (Sept. 23, 1970)

Multiple Use Inc. v. Rogers C. B. Morton, Civil No. 71-211, D. Ariz. Judgment for defendant, 353 F. Supp. 184 (1972); aff'd, 504 F.2d 448 (9th Cir. 1974); no petition.

U.S. v. Thomas R. Shuck, A-27965 (Feb. 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., D. Ariz. Judgment for defendant, Dec. 7, 1961; no appeal.

U.S. v. C. F. Snyder et al., 72 I.D. 223 (1965)

Ruth Snyder, Adm'r(x) of the Estate of C. F. Snyder, Deceased et al. v. Stewart L. Udall, Civil No. 66-C-131, D. Colo. Judgment for plaintiff, 267 F. Supp 110 (1967); rev'd, 405 F.2d 1179 (10th Cir. 1968); cert. denied, 396 U.S. 819 (1969).

U.S. v. Southern Pacific Co., 77 I.D. 41 (1970)

Southern Pacific Co. et al. v. Rogers C. B. Morton et al., Civil No. S-2155, E.D. Cal. Judgment for defendant, Nov. 20, 1974.

U.S. v. Clarence T. & Mary D. Stevens, 77 I.D. 97 (1970)

Clarence T. & Mary D. Stevens v. Walter J. Hickel, Civil No. 1-70-94, D. Idaho. Judgment for defendant, June 4, 1971.

U.S. v. Charles E. Stewart, A-28966 (Sept. 25, 1962)

Charles E. Stewart v. Gordon Penny et al., Civil No. 1619, D. Nev. Judgment for plaintiff, 238 F. Supp. 821 (1965); no appeal.

U.S. v. Cornelius D. Sullivan (a/k/a Corney Sullivan) & Josie L. Sullivan, 5 IBLA 275 (1972)

Cornelius D. & Josie L. Sullivan v. U.S., Ct. Cl. No. 193-69. Dismissed, Oct. 27, 1972.

U.S. v. Elmer H. Swanson, 81 I.D. 14 (1974), 34 IBLA 25 (1978)

Elmer H. Swanson v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 4-74-10, D. Idaho. Dismissed without prejudice, Dec. 23, 1975 (opinion).

Elmer H. Swanson & Livingston Silver, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV-78-4045, D. Idaho. Suit pending.

U.S. v. Tempest Mining Co., 40 IBLA 297 (1979)

Tempest Mining Corp. v. U.S., Dept. of Interior, Bureau of Land Management & Secretary of the Interior, Civil No. CIV 79-1103, D. Idaho. Suit pending.

U.S. v. C. Fred Underwood et al., 22 IBLA 62 (1975), (amended decision) 22 IBLA 70 (1975)

C. Fred Underwood, Chloe Underwood & Jack D. Canon v. The Secretary of the Interior, Civil No. S-76-91 PCW, E.D. Cal. Judgment for defendant, June 23, 1977; aff'd, Mar. 19, 1980.

U.S. v. United States Pumice Co., 37 IBLA 153 (1978); Supplemental Order of Intervention, June 1, 1979, Clarification of Order of June 1, 1979, dated July 18, 1979

The Wilderness Society, McKenzie Flyfishers, The Obsidians, et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 79-0296. Dismissed, May 30, 1979.

U.S. v. U.S. Silica Corp. et al., A-30400 (Aug. 24, 1965)

Simplot Industries, Inc. v. Udall, Civil No. 1024-S, D. Nev. Judgment for defendant, Sept. 26, 1969; no appeal.

U.S. v. Alfred N. Verrue, 75 I.D. 300 (1968)

Alfred N. Verrue v. U.S. et al., Civil No. 6898 Phx., D. Ariz. Rev'd & remanded, Dec. 29, 1970; aff'd, 457 F.2d 1202 (9th Cir. 1971); no petition.

U.S. v. Kenneth O. Watkins & Harold E. L. Barton, A-29862 (Apr. 24, 1966), A-30659 (Oct. 19, 1967)

Harold E. L. Barton v. Stewart L. Udall, Secretary of the Interior & U.S., Civil No. 69-26, D. Ore. Judgment for defendant, Mar. 17, 1971; aff'd, 498 F.2d 288 (9th Cir. 1974); cert. denied, Nov. 18, 1974.

U.S. v. *Oscar W. Weiss et al.*, A-30809 (Sept. 14, 1967), 15 IBLA 198 (1974)

Oscar W. Weiss v. *Stewart L. Udall*, Civil No. C-882, D. Colo. Remanded, Jan. 2, 1969.

U.S. v. *Thomas C. Wells*, A-30805 (Jan. 8, 1968), A-30805 (Supp.) (Apr. 25, 1969), A-30805 (Supp. II) (Nov. 17, 1969)

Thomas C. Wells v. *Udall*, Civil No. S-693, E.D. Cal. Remanded to Secretary, Dec. 12, 1968; remanded to Bureau of Land Mgmt. Time extended to Nov. 1, 1970, to comply with requirements of Supp. II. Judgment for defendant, Dec. 17, 1970.

U.S. v. *Vernon O. & Ina C. White*, 72 I.D. 552 (1965)

Vernon O. & Ina C. White v. *Stewart L. Udall*, Civil No. 1-65-122, D. Idaho. Judgment for defendant, Jan. 6, 1967; aff'd, 404 F.2d 334 (9th Cir. 1968); no petition.

U.S. v. *Milton Wichner*, 35 IBLA 240 (1978)

Milton Wichner v. *Cecil D. Andrus, Secretary of the Interior, Bob Bergland, Secretary of Agriculture, Frank Gregg, Director, BLM, Edward L. Hastey, State Dir. (California), BLM, William T. Dresser, Forest Supervisor of the Angeles National Forest, & U.S.*, Civil No. CV 78-2804, C.D. Cal. Suit pending.

U.S. v. *Frank W. Winegar et al.*, 81 I.D. 370 (1974)

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17j-2(g) ------ M-36914; 86 I.D. 553 (1979)
20 ------------35 IBLA 183; 85 I.D. 140 (1978)
M-36914; 86 I.D. 553 (1979)
20 *et seq.* ---- IBCA-1232-12-78; 86 I.D. 197 (1979)
20a ----------- M-36914; 86 I.D. 553 (1979)
21 ------------ M-36914; 86 I.D. 553 (1979)
22 ------------35 IBLA 183; 85 I.D. 140 (1978)
M-36914; 86 I.D. 553 (1979)
32 ------------35 IBLA 183; 85 I.D. 140 (1978)
41 ------------ M-36914; 86 I.D. 553 (1979)
43 ------------ M-36914; 86 I.D. 553 (1979)
45a -----------35 IBLA 183; 85 I.D. 140 (1978)
45d -----------35 IBLA 183; 85 I.D. 140 (1978)
49 *et seq.* ----24 IBLA 39 (Feb. 23, 1976)
55 ------------35 IBLA 183; 85 I.D. 140 (1978)
80d ----------- M-36914; 86 I.D. 553 (1979)
90 ------------18 IBLA 407 (Feb. 10, 1975)
24 IBLA 289 (Apr. 1, 1976)
32 IBLA 155 (Sept. 12, 1977)
90a -----------24 IBLA 289 (Apr. 1, 1976)
90a-1 ---------24 IBLA 289 (Apr. 1, 1976)
90b-1 ---------24 IBLA 289 (Apr. 1, 1976)
90c ----------- M-36914; 86 I.D. 553 (1979)
91-93 --------- M-36914; 86 I.D. 553 (1979)
121 ------------ M-36914; 86 I.D. 553 (1979)
123 ------------ M-36914; 86 I.D. 553 (1979)
158 ------------ M-36914; 86 I.D. 553 (1979)
160-160k ------- 3 OHA 97 (July 31, 1979)
217 *et seq.* ----35 IBLA 108 (May 15, 1978)
245 ------------ M-36914; 86 I.D. 553 (1979)
264 ------------ M-36914; 86 I.D. 553 (1979)
273 ------------42 IBLA 74 (Aug. 13, 1979)
420 ------------32 IBLA 205 (Sept. 19, 1977)
431 ------------21 IBLA 392 (Aug. 27, 1975)
22 IBLA 97 (Sept. 22, 1975)
24 IBLA 49 (Feb. 23, 1976)
25 IBLA 311 (June 29, 1976)
26 IBLA 71 (July 9, 1976)
27 IBLA 38 (Sept. 22, 1976)
28 IBLA 214; 83 I.D. 666 (1976)
30 IBLA 220 (May 26, 1977)
39 IBLA 137 (Jan. 29, 1979)
41 IBLA 105 (June 11, 1979)
431 *et seq.* ----28 IBLA 214; 83 I.D. 666 (1976)
M-36914; 86 I.D. 553 (1979)
431-433 --------40 IBLA 280 (Apr. 18, 1979)
432 ------------26 IBLA 71 (July 9, 1976)
28 IBLA 214; 83 I.D. 666 (1976)
30 IBLA 220 (May 26, 1977)
41 IBLA 105 (June 11, 1979)
433 ------------22 IBLA 97 (Sept. 22, 1975)
459a-1 --------- M-36914; 86 I.D. 553 (1979)
459c-459c-7 ---- 2 OHA 35 (Sept. 9, 1976)
460a-2 --------- M-36914; 86 I.D. 553 (1979)
460k ----------- M-36914; 86 I.D. 553 (1979)
460k-1 --------- M-36914; 86 I.D. 553 (1979)

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460l-4 *et seq.*	22 IBLA 182 (Oct. 7, 1975)
460m-5	M-36914; 86 I.D. 553 (1979)
460m-8	37 IBLA 381 (Nov. 6, 1978)
460m-8 *et seq.*	37 IBLA 381 (Nov. 6, 1978)
460m-9	37 IBLA 381 (Nov. 6, 1978)
460m-12	M-36914; 86 I.D. 553 (1979)
460m-13	37 IBLA 381 (Nov. 6, 1978)
460n	22 IBLA 331 (Nov. 10, 1975)
460n-3	26 IBLA 197 (Aug. 11, 1976) 28 IBLA 305 (Jan. 13, 1977) 36 IBLA 53 (June 30, 1978) 37 IBLA 272 (Oct. 20, 1978) 40 IBLA 126 (Mar. 28, 1979)
460q *et seq.*	34 IBLA 44 (Feb. 16, 1978)
460s-5	M-36914; 86 I.D. 553 (1979)
460u	3 OHA 145 (Nov. 2, 1979)
460y	25 IBLA 287; 83 I.D. 249 (1976)
460y-7	25 IBLA 287; 83 I.D. 249 (1976)
460aa	43 IBLA 84 (Sept. 19, 1979)
460aa *et seq.*	40 IBLA 297 (Apr. 27, 1979)
460aa-9	40 IBLA 297 (Apr. 27, 1979) 43 IBLA 84 (Sept. 19, 1979)
460bb-3	M-36914; 86 I.D. 553 (1979)
460hh *et seq.*	29 IBLA 33 (Feb. 10, 1977)
461	20 IBLA 54 (Apr. 24, 1975) 24 IBLA 49 (Feb. 23, 1976) 24 IBLA 181 (Mar. 16, 1976) 28 IBLA 214; 83 I.D. 666 (1976)
461 *et seq.*	18 IBLA 359 (Jan. 30, 1975) 24 IBLA 49 (Feb. 23, 1976) 28 IBLA 214; 83 I.D. 666 (1976) 30 IBLA 220 (May 26, 1977)
461-467	21 IBLA 392 (Aug. 27, 1975) 22 IBLA 97 (Sept. 22, 1975) 26 IBLA 71 (July 9, 1976) 27 IBLA 38 (Sept. 22, 1976) 28 IBLA 214; 83 I.D. 666 (1976) 30 IBLA 220 (May 26, 1977) 38 IBLA 361 (Dec. 29, 1978) 41 IBLA 105 (June 11, 1979)
462	25 IBLA 311 (June 29, 1976) 28 IBLA 214; 83 I.D. 666 (1976)
464	25 IBLA 311 (June 29, 1976) 28 IBLA 214; 83 I.D. 666 (1976)
469	26 IBLA 71 (July 9, 1976) 28 IBLA 214; 83 I.D. 666 (1976) 41 IBLA 105 (June 11, 1979)
469-469c	26 IBLA 71 (July 9, 1976) 28 IBLA 214; 83 I.D. 666 (1976) 40 IBLA 280 (Apr. 18, 1979) 41 IBLA 105 (June 11, 1979)
469a-1	28 IBLA 214; 83 I.D. 666 (1976) 40 IBLA 280 (Apr. 18, 1979)
469a-1(a)	26 IBLA 71 (July 9, 1976) 28 IBLA 214; 83 I.D. 666 (1976) 41 IBLA 105 (June 11, 1979)
469a-1(b)	40 IBLA 280 (Apr. 18, 1979)
469a-2(a)	26 IBLA 71 (July 9, 1976) 28 IBLA 214; 83 I.D. 666 (1976) 41 IBLA 105 (June 11, 1979)
469b	26 IBLA 71 (July 9, 1976)
470	24 IBLA 49 (Feb. 23, 1976) 28 IBLA 214; 83 I.D. 666 (1976)
470 *et seq.*	40 IBLA 280 (Apr. 18, 1979)
470-470b	43 IBLA 259 (Oct. 15, 1979)

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sec. 470-470m	40 IBLA 280 (Apr. 18, 1979)
470a(a)(1)	40 IBLA 280 (Apr. 18, 1979)
470c-470n	43 IBLA 259 (Oct. 15, 1979)
470d	40 IBLA 280 (Apr. 18, 1979)
470f	40 IBLA 280 (Apr. 18, 1979) M-36917 (Dec. 6, 1979); 87 I.D. 27 (1980)
470s	M-36917 (Dec. 6, 1979); 87 I.D. 27 (1980)
471 *et seq.*	20 IBLA 387 (June 16, 1975)
472	18 IBLA 379 (Jan. 30, 1975)
473	M-36911; 86 I.D. 151 (1979)
478	24 IBLA 289 (Apr. 1, 1976)
478a	30 IBLA 74 (Apr. 18, 1977) 40 IBLA 317 (Apr. 30, 1979)
485	42 IBLA 345 (Aug. 31, 1979)
486	42 IBLA 345 (Aug. 31, 1979)
506-508	20 IBLA 387 (June 16, 1975)
508b	20 IBLA 149 (May 5, 1975)
523	32 IBLA 205 (Sept. 19, 1977)
532-538	32 IBLA 205 (Sept. 19, 1977)
594	39 IBLA 205 (Feb. 2, 1979)
594-1	39 IBLA 205 (Feb. 2, 1979)
661	43 IBLA 235 (Oct. 10, 1979) M-36885; 83 I.D. 589 (1976)
661 *et seq.*	24 IBLA 49 (Feb. 23, 1976) M-36914; 86 I.D. 553 (1979)
661-666c	M-36895; 84 I.D. 403 (1977)
662(d)	M-36885; 83 I.D. 589 (1976)
668	24 IBLA 391 (May 3, 1976)
668 *et seq.*	24 IBLA 391 (May 3, 1976)
668(a)	24 IBLA 391 (May 3, 1976)
668(d)(1)	M-36914; 86 I.D. 553 (1979)
668dd	43 IBLA 110 (Sept. 24, 1979) M-36914; 86 I.D. 553 (1979)
668dd-668ee	M-36914; 86 I.D. 553 (1979)
668dd(b)(1)	M-36914; 86 I.D. 553 (1979)
668dd(c)	43 IBLA 110 (Sept. 24, 1979) 43 IBLA 235 (Oct. 10, 1979)
668dd(d)	M-36914; 86 I.D. 553 (1979)
668dd(d)(2)	43 IBLA 110 (Sept. 24, 1979) M-36914; 86 I.D. 553 (1979)
668dd(i)	M-36914; 86 I.D. 553 (1979)
671-697a	M-36914; 86 I.D. 553 (1979)
694	M-36914; 86 I.D. 553 (1979)
715a	20 IBLA 333 (June 11, 1975) M-36914; 86 I.D. 553 (1979)
715s(f)	M-36914; 86 I.D. 553 (1979)
718	20 IBLA 333 (June 11, 1975)
718d	M-36914; 86 I.D. 553 (1979)
718d(b)	20 IBLA 333 (June 11, 1975)
718d(c)	20 IBLA 333 (June 11, 1975)
748	30 IBLA 388; 84 I.D. 282 (1977)
791	24 IBLA 49 (Feb. 23, 1976) 42 IBLA 260 (Aug. 27, 1979)
791 *et seq.*	31 IBLA 357 (July 25, 1977)
791a *et seq.*	22 IBLA 342 (Nov. 14, 1975)
791a-823	43 IBLA 382 (Oct. 31, 1979)
792 *et seq.*	M-36915; 86 I.D. 400 (1979)
797a	M-36915; 86 I.D. 553 (1979)
800(b)	M-36900; 86 I.D. 293 (1979)
811	M-36885; 83 I.D. 589 (1976)
818	4 ANCAB 24; 86 I.D. 663 (1979) 20 IBLA 341 (June 11, 1975) 21 IBLA 181 (July 25, 1975) 21 IBLA 199 (July 30, 1975) 22 IBLA 266 (Oct. 30, 1975) 24 IBLA 5 (Feb. 4, 1976) 24 IBLA 49 (Feb. 23, 1976) 31 IBLA 242 (July 18, 1977) 31 IBLA 357 (July 25, 1977) 32 IBLA 305 (Sept. 30, 1977) 41 IBLA 382 (July 23, 1979) 42 IBLA 59 (Aug. 2, 1979)

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42 IBLA 260 (Aug. 27, 1979)
43 IBLA 245 (Oct. 10, 1979)
M-36735 (Supp.); 83 I.D. 346 (1976)
M-36914; 86 I.D. 553 (1979)
832 ------------ M-36885; 83 I.D. 589 (1976)
832a ----------- M-36885; 83 I.D. 589 (1976)
832a(b) --------- M-36885; 83 I.D. 589 (1976)
832a(f) --------- M-36885; 83 I.D. 589 (1976)
832b ----------- M-36885; 83 I.D. 589 (1976)
832-832l ------- M-36885; 83 I.D. 589 (1976)
835d ----------- M-36887; 84 I.D. 72 (1977)
838-838k ------- M-36885; 83 I.D. 589 (1976)
838g ----------- M-36885; 83 I.D. 589 (1976)
838i ----------- M-36885; 83 I.D. 589 (1976)
838i(a) -------- M-36885; 83 I.D. 589 (1976)
838i(b) -------- M-36885; 83 I.D. 589 (1976)
838i(c) ------- M-36885; 83 I.D. 589 (1976)
1001 *et seq.* --- M-36904; 85 I.D. 254 (1978)
1131 ------------23 IBLA 102 (Dec. 23, 1975)
24 IBLA 210 (Mar. 23, 1976)
42 IBLA 190 (Aug. 22, 1979)
M-36910; 86 I.D. 89 (1979)
1131 *et seq.* ----22 IBLA 328 (Nov. 10, 1975)
23 IBLA 102 (Dec. 23, 1975)
37 IBLA 153 (Oct. 5, 1978)
41 IBLA 253 (June 28, 1979)
M-36910; 86 I.D. 89 (1979)
M-36914; 86 I.D. 553 (1979)
1131-1136 -------22 IBLA 97 (Sept. 22, 1975)
43 IBLA 115 (Sept. 24, 1979)
1131(a) --------- M-36914; 86 I.D. 553 (1979)
1131(c) ---------42 IBLA 164 (Aug. 17, 1979)
42 IBLA 190 (Aug. 22, 1979)
M-36910; 86 I.D. 89 (1979)
M-36914: 86 I.D. 553 (1979)
1132 ------------41 IBLA 253 (June 28, 1979)
M-36910; 86 I.D. 89 (1979)
1132(b) ---------41 IBLA 253 (June 28, 1979)
M-36910; 86 I.D. 89 (1979)
1132(c)----------41 IBLA 253 (June 28, 1979)
M-36910; 86 I.D. 89 (1979)
1132(d) --------- M-36910; 86 I.D. 89 (1979)
1133(a) --------- M-36914; 86 I.D. 553 (1979)
1133(b) --------- M-36914; 86 I.D. 553 (1979)
1133(c) ---------22 IBLA 328 (Nov. 10, 1975)
M-36910; 86 I.D 89 (1979)
1133(d)(2) ------ M-36910; 86 I.D. 89 (1979)
1133(d)(3) ------23 IBLA 102 (Dec. 23, 1975)
24 IBLA 12; 83 I.D. 33 (1976)
24 IBLA 210 (Mar. 23, 1976)
M-36910; 86 I.D. 89 (1979)
1133(d)(5) ------ M-36910; 86 I.D. 89 (1979)
1133(d)(7) ------ M-36914; 86 I.D. 553 (1979)
1271 ------------25 IBLA 171 (June 14, 1976)
M-36914; 86 I.D. 553 (1979)
1271 *et seq.* ----24 IBLA 5 (Feb. 4, 1976)
25 IBLA 150 (June 10, 1976)
29 IBLA 107 (Feb. 23, 1977)
33 IBLA 116 (Dec. 16, 1977)
36 IBLA 84 (July 12, 1978)
37 IBLA 387 (Nov. 6, 1978)
39 IBLA 390 (Feb. 28, 1979)
1271-1287 -------19 IBLA 191 (Mar. 18, 1975)
21 IBLA 289 (Aug. 11, 1975)
23 IBLA 102 (Dec. 23, 1975)
43 IBLA 153 (Sept. 28, 1979)
44 IBLA 216 (Dec. 11, 1979)
M-36914; 86 I.D. 553 (1979)
1272 ------------ M-36914; 86 I.D. 553 (1979)
1273 ------------36 IBLA 84 (July 12, 1978)
1273(b) ---------29 IBLA 107 (Feb. 23, 1977)
1274 ------------ M-36914; 86 I.D. 553 (1979)
1275 ------------36 IBLA 84 (July 12, 1978)
M-36914; 86 I.D. 553 (1979)

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sec. 1275(a) ---------19 IBLA 97 (Mar. 4, 1975)
19 IBLA 191 (Mar. 18, 1975)
21 IBLA 289 (Aug. 11, 1975)
23 IBLA 102 (Dec. 23, 1975)
29 IBLA 107 (Feb. 23, 1977)
39 IBLA 390 (Feb. 28, 1979)
1275-1276 ------- M-36914; 86 I.D. 553 (1979)
1276(a) ---------29 IBLA 107 (Feb. 23, 1977)
36 IBLA 84 (July 12, 1978)
1276(a)(9) ------24 IBLA 5 (Feb. 4, 1976)
24 IBLA 128 (Mar. 3, 1976)
25 IBLA 150 (June 10, 1976)
1276(a)(10) -----25 IBLA 150 (June 10, 1976)
1276(a)(11) -----25 IBLA 150 (June 10, 1976)
1276(a)(15) -----25 IBLA 150 (June 10, 1976)
1276(a)(41) -----25 IBLA 171 (June 14, 1976)
1276(a)(43) -----25 IBLA 150 (June 10, 1976)
1276(a)(44) -----25 IBLA 150 (June 10, 1976)
1276(a)(47) -----25 IBLA 150 (June 10, 1976)
1276(a)(49) -----25 IBLA 150 (June 10, 1976)
1276(b) ---------29 IBLA 107 (Feb. 23, 1977)
1276(d) ---------19 IBLA 191 (Mar. 18, 1975)
21 IBLA 289 (Aug. 11, 1975)
23 IBLA 102 (Dec. 23, 1975)
1277 ------------ M-36914; 86 I.D. 553 (1979)
1278 ------------36 IBLA 84 (July 12, 1978)
1278(b) ---------24 IBLA 5 (Feb. 4, 1976)
24 IBLA 128 (Mar. 3, 1976)
25 IBLA 171 (June 14, 1976)
36 IBLA 84 (July 12, 1978)
1278(b)(i) ------36 IBLA 84 (July 12, 1978)
39 IBLA 390 (Feb. 28, 1979)
1279(b) ---------24 IBLA 5 (Feb. 4, 1976)
25 IBLA 171 (June 14, 1976)
29 IBLA 107 (Feb. 23, 1977)
1280 ------------24 IBLA 128 (Mar. 3, 1976)
25 IBLA 150 (June 10, 1976)
36 IBLA 84 (July 12, 1978)
1280(b) ---------25 IBLA 150 (June 10, 1976)
39 IBLA 390 (Feb. 28, 1979)
1281(a) ---------29 IBLA 107 (Feb. 23, 1977)
1284(b) --------- M-36914; 86 I.D. 553 (1979)
1284(c) --------- M-36914; 86 I.D. 553 (1979)
1284(g) ---------29 IBLA 107 (Feb. 23, 1977)
1331 ------------26 IBLA 257 (Aug. 18, 1976)
1331-1340 -------26 IBLA 257 (Aug. 18, 1976)
26 IBLA 320 (Aug. 30, 1976)
29 IBLA 4 (Feb. 7, 1977)
39 IBLA 272; 86 I.D. 133 (1979)
1332(c) --------- M-36914; 86 I.D. 553 (1979)
1333 ------------ M-36914; 86 I.D. 553 (1979)
1333 *et seq.* ---- M-36914; 86 I.D. 553 (1979)
1335 ------------26 IBLA 320 (Aug. 30, 1976)
39 IBLA 381 (Feb. 28, 1979)
1338(a) ---------29 IBLA 4 (Feb. 7, 1977)
1338a -----------39 IBLA 381 (Feb. 28, 1979)
1531-1543 ------- M-36895; 84 I.D. 403 (1977)
1531(b) --------- M-36905; 85 I.D. 275 (1978)
1536 ------------ M-36895; 84 I.D. 403 (1977)
M-36905; 85 I.D. 275 (1978)
1600 *et seq.* ----42 IBLA 345 (Aug. 31, 1979)
1601 ------------42 IBLA 26 (July 26, 1979)
1901 ------------30 IBLA 333 (June 7, 1977)
37 IBLA 381 (Nov. 6, 1978)
44 IBLA 297 (Dec. 31, 1979)
1901-1912 -------43 IBLA 363 (Oct. 29, 1979)
44 IBLA 297 (Dec. 31, 1979)
1902 *et seq.* ----29 IBLA 33 (Feb. 10, 1977)
1907 ------------43 IBLA 210; 86 I.D. 5[illegible] (1979)
44 IBLA 220 (Dec. 11, 1979)

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sec. 203 ------------ M-36883; 83 I.D. 131 (1976)
205 ------------ M-36883; 83 I.D. 131 (1976)
207 ------------ M-36883; 83 I.D. 131 (1976)
208 ------------24 IBLA 58 (Feb. 23, 1976)

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sec.	431	24 IBLA 58 (Feb. 23, 1976)
	431-433	24 IBLA 58 (Feb. 23, 1976)
	432	24 IBLA 58 (Feb. 23, 1976)
	434	24 IBLA 58 (Feb. 23, 1976)
	501	22 IBLA 143 (Sept. 30, 1975)
		31 IBLA 167 (July 5, 1977)
	1001	26 IBLA 160 (Aug. 4, 1976)
		27 IBLA 317; 83 I.D. 533 (1976)
		27 IBLA 330; 83 I.D. 538 (1976)
		28 IBLA 1 (Nov. 5, 1976)
		28 IBLA 79 (Nov. 12, 1976)
		28 IBLA 300 (Jan. 10, 1977)
		31 IBLA 24 (June 20, 1977)
		32 IBLA 118 (Sept. 12, 1977)
		33 IBLA 102 (Dec. 16, 1977)
		34 IBLA 160 (Mar. 10, 1978)
		36 IBLA 349 (Aug. 28, 1978)
		39 IBLA 211; 86 I.D. 80 (1979)
		40 IBLA 53 (Mar. 16, 1979)
		40 IBLA 100 (Mar. 27, 1979)
		43 IBLA 14 (Sept. 11, 1979)
		43 IBLA 74 (Sept. 19, 1979)
		44 IBLA 99 (Nov. 20, 1979)
		44 IBLA 136 (Nov. 30, 1979)
	1151	M-36886; 84 I.D. 1 (1977)
	1162	M-36907; 85 I.D. 433 (1978)
	1341	22 IBLA 336 (Nov. 11, 1975)
	1162	M-36887; 84 I.D. 72 (1977)
	1162(b)	M-36887; 84 I.D. 72 (1977)
	1165	M-36887; 84 I.D. 72 (1977)
	3243	M-36907; 85 I.D. 433 (1978)

TITLE 23:

sec.	101(a)	7 IBIA 299; 86 I.D. 680 (1979)
	103(b)(1)	7 IBIA 299; 86 I.D. 680 (1979)
	108	20 IBLA 261; 82 I.D. 242 (1975)
	120(a)	7 IBIA 299; 86 I.D. 680 (1979)
	120(f)	7 IBIA 299; 86 I.D. 680 (1979)
	120(g)	7 IBIA 299; 86 I.D. 680 (1979)
	125(c)	7 IBIA 299; 86 I.D. 680 (1979)
	131	7 IBIA 299; 86 I.D. 680 (1979)
	131(b)	7 IBIA 299; 86 I.D. 680 (1979)
	131(b)-131(k)	7 IBIA 299; 86 I.D. 680 (1979)
	131(h)	7 IBIA 299; 86 I.D. 680 (1979)
	203	7 IBIA 299; 86 I.D. 680 (1979)
	208	7 IBIA 299; 86 I.D. 680 (1979)
	217(c)	7 IBIA 299; 86 I.D. 680 (1979)
	317	20 IBLA 261; 82 I.D. 242 (1975)
		29 IBLA 210 (Mar. 22, 1977)
		31 IBLA 389 (Aug. 19, 1977)
	317(c)	20 IBLA 261; 82 I.D. 242 (1975)

TITLE 24:

sec.	47	7 IBIA 83 (Aug. 8, 1978)

TITLE 25:

sec.	1	7 IBIA 240 (Oct. 23, 1979)
	1(a)	7 IBIA 240 (Oct. 23, 1979)
	2	7 IBIA 240 (Oct. 23, 1979)
	47	5 IBIA 242 (Nov. 5, 1976)
	81	7 IBIA 240 (Oct. 23, 1979)
	131(g)	7 IBIA 299; 86 I.D. 680 (1979)
	177	M-36896; 84 I.D. 905 (1977)
	194	7 IBIA 188; 86 I.D. 425 (1979)
	202	6 IBIA 17; 84 I.D. 68 (1977)
	257	6 IBIA 196; 84 I.D. 938 (1977)
	311	M-36908; 86 I.D. 3 (1979)
	312-318	M-36886; 84 I.D. 1 (1977)
		M-36908; 86 I.D. 3 (1979)
	325	6 IBIA 196; 84 I.D. 938 (1977)
	327	29 IBLA 210 (Mar. 22, 1977)
	331 et seq.	5 IBIA 61; 83 I.D. 145 (1976)
	331-348	M-36886; 84 I.D. 1 (1977)

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sec.	331-358	7 IBIA 188; 86 I.D. 425 (1979)
	332	7 IBIA 188; 86 I.D. 425 (1979)
	334	20 IBLA 387 (June 16, 1975)
		21 IBLA 85 (June 27, 1975)
		22 IBLA 205 (Oct. 15, 1975)
		25 IBLA 229 (June 21, 1976)
		26 IBLA 194 (Aug. 11, 1976)
		29 IBLA 210 (Mar. 22, 1977)
		32 IBLA 280 (Sept. 27, 1977)
		35 IBLA 19 (May 5, 1978)
		39 IBLA 141 (Jan. 29, 1979)
		43 IBLA 130 (Sept. 26, 1979)
	336	20 IBLA 387 (June 16, 1975)
		29 IBLA 210 (Mar. 22, 1977)
	337	21 IBLA 85 (June 27, 1975)
		32 IBLA 280 (Sept. 27, 1977)
		35 IBLA 19 (May 5, 1978)
		39 IBLA 399 (Mar. 2, 1979)
	339	4 IBIA 263; 82 I.D. 640 (1975)
	348	5 IBIA 61; 83 I.D. 145 (1976)
		6 IBIA 47 (Apr. 1, 1977)
		6 IBIA 75; 84 I.D. 187 (1977)
		7 IBIA 100; 85 I.D. 438 (1978)
		7 IBIA 240 (Oct. 23, 1979)
		7 IBIA 254 (Oct. 25, 1979)
		7 IBIA 286 (Nov. 28, 1979)
		M-36908; 86 I.D. 3 (1979)
	349	5 IBIA 61; 83 I.D. 145 (1976)
		7 IBIA 188; 86 I.D. 425 (1979)
		28 IBLA 13 (Feb. 8, 1977)
	352	M-36886; 84 I.D. 1 (1977)
		M-36908; 86 I.D. 3 (1979)
	354	4 IBIA 189; 82 I.D. 541 (1975)
	357	7 IBIA 299; 86 I.D. 680 (1979)
	371	4 IBIA 263; 82 I.D. 640 (1975)
		5 IBIA 174 (Sept. 2, 1976)
		5 IBIA 270 (Dec. 17, 1976)
		7 IBIA 53 (Apr. 25, 1978)
	372	4 IBIA 263; 82 I.D. 640 (1975)
		6 IBIA 52 (May 4, 1977)
		7 IBIA 53 (Apr. 25, 1978)
		7 IBIA 188; 86 I.D. 425 (1979)
		7 IBIA 240 (Oct. 23, 1979)
		7 IBIA 254 (Oct. 25, 1979)
		7 IBIA 271 (Nov. 20, 1979)
	372-373	7 IBIA 286 (Nov. 28, 1979)
	372-1	6 IBIA 52 (May 4, 1977)
	372a	4 IBIA 97; 82 I.D. 341 (1975)
		6 IBIA 52 (May 4, 1977)
		7 IBIA 171 (July 31, 1979)
	373	4 IBIA 12; 82 I.D. 169 (1975)
		5 IBIA 162; 83 I.D. 306 (1976)
		5 IBIA 270 (Dec. 17, 1976)
		6 IBIA 17; 84 I.D. 68 (1977)
		6 IBIA 47 (Apr. 1, 1977)
		6 IBIA 144 (Sept. 9, 1977)
		7 IBIA 53 (Apr. 25, 1978)
		7 IBIA 164 (June 29, 1979)
		7 IBIA 240 (Oct. 23, 1979)
		7 IBIA 261 (Oct. 30, 1979)
	373a	7 IBIA 224 (Oct. 15, 1979)
	377	7 IBIA 271 (Nov. 20, 1979)
	380	3 IBIA 224; 82 I.D. 19 (1975)
		4 IBIA 255 (Dec. 22, 1975)
	386a	M-36886; 84 I.D. 1 (1977)
	393	4 IBIA 205, 82 I.D. 568 (1975)
	396	29 IBLA 13 (Feb. 8, 1977)
	396a	M-36896; 84 I.D. 905 (1977)
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	396a-396g	19 IBLA 245 (Mar. 28, 1975)
	396b	M-36896; 84 I.D. 905 (1977)
	396c	M-36896; 84 I.D. 905 (1977)
	396d	28 IBLA 13 (Feb. 8, 1977)

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sec.	396f	19 IBLA 245 (Mar. 28, 1975) M-36896 (Supp.); 86 I.D. 181 (1979)
	397	M-36896; 84 I.D. 905 (1977) M-36896 (Supp.); 86 I.D. 181 (1979)
	398	M-36896; 84 I.D. 905 (1977) M-36896 (Supp.); 86 I.D. 181 (1979)
	398a	M-36896; 84 I.D. 905 (1977)
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	398c	M-36896 (Supp.); 86 I.D. 181 (1979)
	398d	M-36887; 84 I.D. 72 (1977)
	399	M-36886; 84 I.D. 1 (1977) M-36896; 84 I.D. 905 (1977) M-36908; 86 I.D. 3 (1979)
	400	M-36896; 84 I.D. 905 (1977)
	403b	4 IBIA 255 (Dec. 22, 1975)
	403c	4 IBIA 255 (Dec. 22, 1975)
	406(a)	7 IBIA 36 (Mar. 17, 1978)
	413	7 IBIA 36 (Mar. 17, 1978)
	415	7 IBIA 299; 86 I.D. 680 (1979)
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	461 *et seq.*	4 IBIA 189; 82 I.D. 541 (1975) 7 IBIA 11; 85 I.D. 31 (1978)
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	462	7 IBIA 188; 86 I.D. 425 (1979)
	463	37 IBLA 313 (Oct. 25, 1978) 44 IBLA 1 (Nov. 6, 1979)
	463(a)	M-36886; 84 I.D. 1 (1977)
	464	4 IBIA 168 (Oct. 30, 1975) 5 IBIA 20 (Feb. 4, 1976) 5 IBIA 72; 83 I.D. 170 (1976) 6 IBIA 52 (May 4, 1977) 6 IBIA 75; 84 I.D. 187 (1977) 7 IBIA 212 (Sept. 12, 1979)
	464 *et seq.*	6 IBIA 52 (May 4, 1977) 7 IBIA 212 (Sept. 12, 1979)
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	478	4 IBIA 228 (Nov. 25, 1975)
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	575	19 IBLA 245 (Mar. 28, 1975)
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	608(d)	7 IBIA 22 (Feb. 17, 1978)
	611	19 IBLA 245 (Mar. 28, 1975)
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	1301 *et seq.*	M-36887; 84 I.D. 72 (1977)
	1301-1303	M-36907; 85 I.D. 433 (1978)
	1302	6 IBIA 98 (June 2, 1977) 7 IBIA 92 (Aug. 17, 1978)
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	1401 *et seq.*	3 IBIA 266 (Feb. 25, 1975)

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	510	3 ANCAB 219; 86 I.D. 257 (1979)
	512	24 IBLA 58 (Feb. 23, 1976)
	1360	M-36896; 84 I.D. 905 (1977)
	1491	IBCA-1153-5-77; 84 I.D. 969 (1977)
	1927	IBCA-1159-7-77; 85 I.D. 41 (1978)
	2409a	44 IBLA 110 (Nov. 27, 1979)
	2415(a)	34 IBLA 285; 85 I.D. 171 (1978)
	2415(c)	34 IBLA 285; 85 I.D. 171 (1978)
	2516	IBCA-1020-2-74 & IBCA-1033-4-74; 84 I.D. 495 (1977) IBCA-1048-11-74; 84 I.D. 407 (1977)
	2671-2680	39 IBLA 81 (Jan. 24, 1979)

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	158(a)(4)	8 IBMA 164; 84 I.D. 877 (1977)
	160(b)	8 IBMA 164; 84 I.D. 877 (1977)
	651 *et seq.*	IBCA-1080-10-75; 83 I.D. 43 (1976) 4 IBMA 198; 82 I.D. 264 (1975)
	652	6 IBMA 351; 83 I.D. 409 (1976)
	653	6 IBMA 351; 83 I.D. 409 (1976)
	653(b)(1)	IBCA-1080-10-75; 83 I.D. 43 (1976)
	653(b)(2)	IBCA-1080-10-75; 83 I.D. 43 (1976)
	654	6 IBMA 351; 83 I.D. 409 (1976)
	654(a)(1)	IBCA-1139-1-77; 84 I.D. 296 (1977)
	655	IBCA-1080-10-75; 83 I.D. 43 (1976)
	655(a)	IBCA-1080-10-75; 83 I.D. 43 (1976)
	657	6 IBMA 351; 83 I.D. 409 (1976)
	667	IBCA-1080-10-75; 83 I.D. 43 (1976)

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	21 *et seq.*	19 IBLA 326 (Apr. 7, 1975) 23 IBLA 41 (Dec. 2, 1975) 23 IBLA 378 (Feb. 4, 1976) 24 IBLA 34 (Feb. 17, 1976) 25 IBLA 287; 83 I.D. 249 (1976) 27 IBLA 65 (Sept. 29, 1976) 29 IBLA 357; 84 I.D. 137 (1977) 31 IBLA 8 (June 15, 1977) 34 IBLA 285; 85 I.D. 171 (1978) 35 IBLA 95 (May 15, 1978) 35 IBLA 349 (June 19, 1978) 38 IBLA 300 (Dec. 14, 1978)
	21a	30 IBLA 388; 84 I.D. 282 (1977) 34 IBLA 233 (Mar. 27, 1978) 40 IBLA 30 (Mar. 15, 1979) 40 IBLA 339 (May 10, 1979) 44 IBLA 121 (Nov. 27, 1979)
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37 IBLA 153 (Oct. 5, 1978)
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22 ------------18 IBLA 368 (Jan. 30, 1975)
24 IBLA 289 (Apr. 1, 1976)
25 IBLA 77 (June 1, 1976)
25 IBLA 287; 83 I.D. 249 (1976)
28 IBLA 187; 83 I.D. 609 (1976)
29 IBLA 7 (Feb. 8, 1977)
29 IBLA 128 (Feb. 23, 1977)
29 IBLA 333 (Mar. 31, 1977)
29 IBLA 357; 84 I.D. 137 (1977)
30 IBLA 388; 84 I.D. 282 (1977)
31 IBLA 8 (June 15, 1977)
31 IBLA 43 (June 21, 1977)
31 IBLA 173 (July 5, 1977)
32 IBLA 145 (Sept. 12, 1977)
33 IBLA 61 (Dec. 5, 1977)
34 IBLA 31 (Feb. 14, 1978)
34 IBLA 285; 85 I.D. 171 (1978)
37 IBLA 68 (Sept. 18, 1978)
37 IBLA 381 (Nov. 6, 1978)
39 IBLA 8 (Jan. 8, 1979)
40 IBLA 297 (Apr. 27, 1979)
42 IBLA 74 (Aug. 13, 1979)
43 IBLA 84 (Sept. 19, 1979)
43 IBLA 363 (Oct. 29, 1979)
M-36910; 86 I.D. 89 (1979)
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22 et seq. ----18 IBLA 368 (Jan. 30, 1975)
19 IBLA 9; 82 I.D. 68 (1975)
20 IBLA 352 (June 11, 1975)
21 IBLA 296 (Aug. 11, 1975)
21 IBLA 363; 82 I.D. 414 (1975)
23 IBLA 41 (Dec. 2, 1975)
23 IBLA 226 (Jan. 9, 1976)
24 IBLA 354 (Apr. 26, 1976)
25 IBLA 21 (May 5, 1976)
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26 IBLA 131 (July 30, 1976)
29 IBLA 357; 84 I.D. 137 (1977)
30 IBLA 42 (Apr. 18, 1977)
30 IBLA 388; 84 I.D. 282 (1977)
31 IBLA 72; 84 I.D. 309 (1977)
32 IBLA 46 (Sept. 2, 1977)
32 IBLA 248 (Sept. 21, 1977)
33 IBLA 121 (Dec. 19, 1977)
33 IBLA 153 (Dec. 19, 1977)
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33 IBLA 301 (Jan. 10, 1978)
33 IBLA 380 (Jan. 25, 1978)
34 IBLA 285; 85 I.D. 171 (1978)
35 IBLA 4 (May 3, 1978)
35 IBLA 240 (May 30, 1978)
36 IBLA 130 (July 25, 1978)
36 IBLA 148 (July 31, 1978)
36 IBLA 213 (Aug. 3, 1978)
36 IBLA 316 (Aug. 23, 1978)
36 IBLA 358 (Aug. 31, 1978)
37 IBLA 7 (Sept. 6, 1978)
37 IBLA 68 (Sept. 18, 1978)
37 IBLA 277 (Oct. 20, 1978)
37 IBLA 313 (Oct. 25, 1978)
38 IBLA 97 (Nov. 20, 1978)
38 IBLA 101 (Nov. 20, 1978)
38 IBLA 214; 85 I.D. 441 (1978)
39 IBLA 88 (Jan. 26, 1979)
39 IBLA 390 (Jan. 8, 1979)
40 IBLA 297 (Apr. 27, 1979)
40 IBLA 309 (Apr. 30, 1979)
43 IBLA 276 (Oct. 15, 1979)
44 IBLA 297 (Dec. 31, 1979)
22-47 ---------38 IBLA 300 (Dec. 14, 1978)
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23 ------------24 IBLA 289 (Apr. 1, 1976)
25 IBLA 1 (May 5, 1976)

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27 IBLA 99 (Sept. 29, 1976)
29 IBLA 185 (Mar. 18, 1977)
32 IBLA 263 (Sept. 27, 1977)
36 IBLA 171 (July 31, 1978)
38 IBLA 390 (Jan. 8, 1979)
42 IBLA 74 (Aug. 13, 1979)
42 IBLA 313 (Aug. 29, 1979)
26 ------------25 IBLA 1 (May 5, 1976)
29 IBLA 185 (Mar. 18, 1977)
35 IBLA 349 (June 19, 1978)
M-36893 (Supp.); 86 I.D. 627 (1979)
27 ------------43 IBLA 84 (Sept. 19, 1979)
28 ------------19 IBLA 82 (Mar. 3, 1975)
25 IBLA 1 (May 5, 1976)
32 IBLA 46 (Sept. 2, 1977)
34 IBLA 103 (Feb. 27, 1978)
34 IBLA 362 (May 1, 1978)
35 IBLA 240 (May 30, 1978)
36 IBLA 65 (June 30, 1978)
37 IBLA 1 (Sept. 6, 1978)
39 IBLA 8 (Jan. 8, 1979)
39 IBLA 337 (Feb. 28, 1979)
40 IBLA 173 (Apr. 3, 1979)
42 IBLA 338 (Aug. 30, 1979)
43 IBLA 10 (Sept. 11, 1979)
43 IBLA 210; 86 I.D. 538 (1979)
43 IBLA 250 (Oct. 10, 1979)
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M-36910; 86 I.D. 89 (1979)
28-1 ----------37 IBLA 1 (Sept. 6, 1978)
41 IBLA 142 (June 14, 1979)
42 IBLA 296 (Aug. 27, 1979)
42 IBLA 383 (Sept. 11, 1979)
43 IBLA 10 (Sept. 11, 1979)
28b -----------29 IBLA 165 (Mar. 9, 1977)
34 IBLA 103 (Feb. 27, 1978)
35 IBLA 117 (May 15, 1978)
36 IBLA 4 (June 27, 1978)
36 IBLA 65 (June 30, 1978)
39 IBLA 75 (Jan. 24, 1979)
28b-28c -------20 IBLA 12 (Apr. 14, 1975)
32 IBLA 22 (Aug. 30, 1977)
39 IBLA 75 (Jan. 24, 1979)
28b-28e -------29 IBLA 165 (Mar. 9, 1977)
32 IBLA 22 (Aug. 30, 1977)
28c -----------32 IBLA 22 (Aug. 30, 1977)
38 IBLA 178 (Dec. 6, 1978)
40 IBLA 158 (Mar. 30, 1979)
29 ------------19 IBLA 82 (Mar. 3, 1975)
23 IBLA 319 (Jan. 19, 1976)
26 IBLA 378 (Sept. 9, 1976)
30 IBLA 388; 84 I.D. 282 (1977)
37 IBLA 68 (Sept. 18, 1978)
38 IBLA 390 (Jan. 8, 1979)
42 IBLA 364 (Sept. 11, 1979)
30 ------------23 IBLA 319 (Jan. 19, 1976)
35 IBLA 349 (June 19, 1978)
38 IBLA 390 (Jan. 8, 1979)
43 IBLA 35 (Sept. 12, 1979)
35 ------------32 IBLA 263 (Sept. 27, 1977)
34 IBLA 15 (Feb. 10, 1978)
37 IBLA 233 (Oct. 18, 1978)
38 IBLA 390 (Jan. 8, 1979)
39 IBLA 8 (Jan. 8, 1979)
44 IBLA 289 (Dec. 26, 1979)
36 ------------37 IBLA 233 (Oct. 18, 1978)
39 IBLA 337 (Feb. 28, 1979)
44 IBLA 142 (Nov. 30, 1979)
44 IBLA 289 (Dec. 26, 1979)
37 ------------38 IBLA 390 (Jan. 8, 1979)
38 ------------18 IBLA 379 (Jan. 30, 1975)
19 IBLA 82 (Mar. 3, 1975)
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23 IBLA 41 (Dec. 2, 1975)
23 IBLA 319 (Jan. 19, 1976)
26 IBLA 223 (Aug. 17, 1976)
26 IBLA 356 (Sept. 8, 1976)
28 IBLA 246 (Dec. 20, 1976)
29 IBLA 357; 84 I.D. 137 (1977)
32 IBLA 145 (Sept. 12, 1977)
32 IBLA 305 (Sept. 30, 1977)
33 IBLA 187; 84 I.D. 990 (1977)
35 IBLA 240 (May 30, 1978)
37 IBLA 233 (Oct. 18, 1978)
38 IBLA 390 (Jan. 8, 1979)
39 IBLA 337 (Feb. 28, 1979)
42 IBLA 44 (July 31, 1979)
42 IBLA 296 (Aug. 27, 1979)
42 IBLA 364 (Sept. 11, 1979)
43 IBLA 210; 86 I.D. 538 (1979)
43 IBLA 390 (Oct. 31, 1979)
44 IBLA 25 (Nov. 6, 1979)
39 ------------37 IBLA 233 (Oct. 18, 1978)
42 ------------26 IBLA 356 (Sept. 8, 1976)
32 IBLA 145 (Sept. 12, 1977)
32 IBLA 155 (Sept. 12, 1977)
33 IBLA 326 (Jan. 16, 1978)
33 IBLA 380 (Jan. 25, 1978)
36 IBLA 219 (Aug. 8, 1978)
40 IBLA 244 (Apr. 16, 1979)
40 IBLA 297 (Apr. 27, 1979)
42 IBLA 206 (Aug. 22, 1979)
44 IBLA 253 (Dec. 19, 1979)
42(a) ---------33 IBLA 326 (Jan. 16, 1978)
33 IBLA 380 (Jan. 25, 1978)
36 IBLA 219 (Aug. 8, 1978)
42(b) ---------33 IBLA 380 (Jan. 25, 1978)
36 IBLA 219 (Aug. 8, 1978)
49a ----------- M-36911; 86 I.D. 151 (1979)
51 ------------25 IBLA 287; 83 I.D. 249 (1976)
52 ------------25 IBLA 287; 83 I.D. 249 (1976)
54 ------------35 IBLA 146; 85 I.D. 129 (1978)
M-36909; 86 I.D. 28 (1979)
71 ------------36 IBLA 219 (Aug. 8, 1978)
M-36893; 84 I.D. 442 (1977)
71 *et seq.*-----35 IBLA 212 (May 26, 1978)
71-74 ---------19 IBLA 350; 82 I.D. 146 (1975)
71-77 --------- M-36893; 84 I.D. 442 (1977)
72 ------------ M-36893; 84 I.D. 442 (1977)
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76 ------------36 IBLA 219 (Aug. 8, 1978)
81 ------------35 IBLA 146; 85 I.D. 129 (1978)
38 IBLA 340 (Dec. 20, 1978)
M-36909; 86 I.D. 28 (1979)
83 ------------29 IBLA 210 (Mar. 22, 1977)
83-85 ---------35 IBLA 146; 85 I.D. 129 (1978)
38 IBLA 85 (Nov. 15, 1978)
85 ------------38 IBLA 340 (Dec. 20, 1978)
90 ------------38 IBLA 85 (Nov. 15, 1978)
110(b) --------- 8 IBMA 164; 84 I.D. 877 (1977)
121 ------------21 IBLA 190 (July 28, 1975)
33 IBLA 160 (Dec. 20, 1977)
121 *et seq.* ----29 IBLA 210 (Mar. 22, 1977)
33 IBLA 160 (Dec. 20, 1977)
121-123 --------20 IBLA 365 (June 12, 1975)
35 IBLA 146; 85 I.D. 129 (1978)
38 IBLA 85 (Nov. 15, 1978)
121-124 --------41 IBLA 248 (June 27, 1979)
122 ------------33 IBLA 160 (Dec. 20, 1977)
123 ------------29 IBLA 210 (Mar. 22, 1977)
124 ------------24 IBLA 135 (Mar. 8, 1976)
161 ------------19 IBLA 326 (Apr. 7, 1975)
21 IBLA 166 (July 22, 1975)
25 IBLA 199 (June 16, 1976)
28 IBLA 13 (Nov. 8, 1976)
31 IBLA 72; 84 I.D. 309 (1977)

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37 IBLA 277 (Oct. 20, 1978)
38 IBLA 214; 85 I.D. 441 (1978)
38 IBLA 390 (Jan. 8, 1979)
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162 ------------23 IBLA 41 (Dec. 2, 1975)
28 IBLA 13 (Nov. 8, 1976)
29 IBLA 132 (Feb. 23, 1977)
31 IBLA 150; 84 I.D. 342 (1977)
181 ------------19 IBLA 245 (Mar. 28, 1975)
24 IBLA 159 (Mar. 15, 1976)
29 IBLA 310 (Mar. 30, 1977)
31 IBLA 72; 84 I.D. 309 (1977)
31 IBLA 290 (July 22, 1977)
32 IBLA 170 (Sept. 13, 1977)
33 IBLA 237 (Dec. 28, 1977)
35 IBLA 43 (May 9, 1978)
37 IBLA 52 (Sept. 18, 1978)
37 IBLA 91 (Sept. 22, 1978)
37 IBLA 367; 85 I.D. 403 (1978)
38 IBLA 130 (Nov. 22, 1978)
39 IBLA 43 (Jan. 16, 1979)
42 IBLA 345 (Aug. 31, 1979)
M-36920 (Dec. 11, 1979); 87 I.D. 69 (1980)
181 *et seq.* ----19 IBLA 235 (Mar. 26, 1975)
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19 IBLA 261 (Mar. 31, 1975)
20 IBLA 1 (Apr. 14, 1975)
20 IBLA 59; 82 I.D. 174 (1975)
20 IBLA 134 (May 5, 1975)
20 IBLA 333 (June 11, 1975)
21 IBLA 254 (Aug. 11, 1975)
22 IBLA 52 (Sept. 17, 1975)
22 IBLA 172 (Sept. 30, 1975)
22 IBLA 172 (Sept. 30, 1975)
22 IBLA 313 (Nov. 10, 1975)
23 IBLA 41 (Dec. 2, 1975)
23 IBLA 142 (Dec. 23, 1975)
24 IBLA 28 (Feb. 11, 1976)
24 IBLA 135 (Mar. 8, 1976)
24 IBLA 210 (Mar. 23, 1976)
24 IBLA 221 (Mar. 24, 1976)
24 IBLA 271 (Mar. 30, 1976)
24 IBLA 301 (Apr. 1, 1976)
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28 IBLA 187; 83 I.D. 609 (1976)
28 IBLA 353 (Jan. 24, 1977)
28 IBLA 394; 84 I.D. 91 (1977)
29 IBLA 97 (Feb. 23, 1977)
29 IBLA 170 (Mar. 14, 1977)
29 IBLA 210 (Mar. 22, 1977)
30 IBLA 259 (May 31, 1977)
30 IBLA 290 (June 1, 1977)
31 IBLA 13 (June 17, 1977)
31 IBLA 72; 84 I.D. 309 (1977)
31 IBLA 150; 84 I.D. 342 (1977)
32 IBLA 13 (Aug. 29, 1977)
32 IBLA 106 (Sept. 12, 1977)
34 IBLA 53 (Feb. 16, 1978)
34 IBLA 274 (Apr. 11, 1978)
34 IBLA 285; 85 I.D. 171 (1978)
35 IBLA 212 (May 26, 1978)
35 IBLA 221; 85 I.D. 154 (1978)
36 IBLA 313 (Aug. 23, 1978)
38 IBLA 85 (Nov. 15, 1978)
38 IBLA 281 (Dec. 13, 1978)
39 IBLA 137 (Jan. 29, 1979)
40 IBLA 280 (Apr. 18, 1979)
41 IBLA 174 (June 22, 1979)
41 IBLA 248 (June 27, 1979)
41 IBLA 367 (July 23, 1979)
41 IBLA 394; 86 I.D. 374 (1979)

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27 IBLA 46 (Sept. 23, 1976)
42 IBLA 333 (Aug. 30, 1979)
43 IBLA 67 (Sept. 19, 1979)
43 IBLA 98 (Sept. 20, 1979)
M-36888; 84 I.D. 54 (1977)
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182 ------------19 IBLA 245 (Mar. 28, 1975)
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184 ------------40 IBLA 397 (May 14, 1979)
41 IBLA 291 (June 28, 1979)
184(b) ---------39 IBLA 161 (Jan. 29, 1979)
184(b)(1) ------39 IBLA 161 (Jan. 29, 1979)
184(b)(2) ------39 IBLA 161 (Jan. 29, 1979)
184(d) ---------30 IBLA 212 (May 20, 1977)
184(d)(1) ------30 IBLA 212 (May 20, 1977)
38 IBLA 130 (Nov. 22, 1978)
40 IBLA 53 (Mar. 16, 1979)
184(h) ---------19 IBLA 235 (Mar. 26, 1975)
22 IBLA 261 (Oct. 24, 1975)
22 IBLA 336 (Nov. 11, 1975)
25 IBLA 306; 83 I.D. 247 (1976)
184(h)(1) ------28 IBLA 394; 84 I.D. 91 (1977)
39 IBLA 161 (Jan. 29, 1979)
184(h)(2) ------21 IBLA 160 (July 21, 1975)
21 IBLA 163 (July 21, 1975)
25 IBLA 269 (June 24, 1976)
30 IBLA 118 (May 2, 1977)
37 IBLA 162 (Oct. 10, 1978)
39 IBLA 49 (Jan. 16, 1979)
40 IBLA 397 (May 14, 1979)
41 IBLA 231 (June 27, 1979)
41 IBLA 291 (June 28, 1979)
M-36893 (Supp.); 86 I.D. 627 (1979)
184(i) ---------21 IBLA 160 (July 21, 1975)
21 IBLA 163 (July 21, 1975)
38 IBLA 285 (Dec. 13, 1978)
41 IBLA 231 (June 27, 1979)
185 ------------38 IBLA 1 (Nov. 8, 1978)
40 IBLA 280 (Apr. 18, 1979)
185(c)(2) ------38 IBLA 1 (Nov. 8, 1978)
185(1) ---------38 IBLA 1 (Nov. 8, 1978)
185(q) ---------38 IBLA 1 (Nov. 8, 1978)
185(t) ---------38 IBLA 1 (Nov. 8, 1978)
186 ------------24 IBLA 135 (Mar. 8, 1976)
38 IBLA 85 (Nov. 15, 1978)
187 ------------21 IBLA 66 (June 25, 1975)
32 IBLA 329 (Oct. 11, 1977)
M-36890; 84 I.D. 244 (1977)
187a -----------22 IBLA 52 (Sept. 17, 1975)
30 IBLA 179 (May 19, 1977)
32 IBLA 325 (Oct. 11, 1977)
36 IBLA 42 (June 30, 1978)
40 IBLA 134 (Mar. 29, 1979)
41 IBLA 188 (June 22, 1979)
43 IBLA 94 (Sept. 19, 1979)
187b -----------35 IBLA 361 (June 23, 1978)
188 ------------21 IBLA 312; 82 I.D. 386 (1975)
22 IBLA 130 (Sept. 26, 1975)
24 IBLA 73 (Feb. 24, 1976)
24 IBLA 121 (Mar. 1, 1976)
25 IBLA 160 (June 14, 1976)
26 IBLA 327 (Aug. 30, 1976)
26 IBLA 348 (Sept. 7, 1976)
28 IBLA 355 (Jan. 31, 1977)
28 IBLA 394; 84 I.D. 91 (1977)
30 IBLA 290 (June 1, 1977)
31 IBLA 296 (July 22, 1977)
32 IBLA 333 (Oct. 18, 1977)
33 IBLA 231 (Dec. 28, 1977)

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34 IBLA 53 (Feb. 16, 1978)
36 IBLA 42 (June 30, 1978)
38 IBLA 319 (Dec. 19, 1978)
38 IBLA 347 (Dec. 22, 1978)
40 IBLA 272 (Apr. 18, 1979)
42 IBLA 148 (Aug. 16, 1979)
42 IBLA 235 (Aug. 22, 1979)
44 IBLA 261 (Dec. 19, 1979)
188 *et seq.* ----30 IBLA 179 (May 19, 1977)
188(a) ---------28 IBLA 394; 84 I.D. 91 (1977)
34 IBLA 285; 85 I.D. 171 (1978)
39 IBLA 161 (Jan. 29, 1979)
M-36888; 84 I.D. 54 (1977)
188(b) ---------18 IBLA 323 (Jan. 6, 1975)
18 IBLA 404 (Feb. 10, 1975)
18 IBLA 420 (Feb. 12, 1975)
19 IBLA 230 (Mar. 25, 1975)
19 IBLA 261 (Mar. 31, 1975)
19 IBLA 280 (Apr. 7, 1975)
19 IBLA 307 (Apr. 7, 1975)
20 IBLA 146 (May 5, 1975)
20 IBLA 206 (May 8, 1975)
20 IBLA 280 (May 22, 1975)
20 IBLA 322 (June 6, 1975)
20 IBLA 361 (June 12, 1975)
21 IBLA 69 (June 25, 1975)
21 IBLA 144 (July 15, 1975)
21 IBLA 287 (Aug. 11, 1975)
21 IBLA 312; 82 I.D. 386 (1975)
21 IBLA 336 (Aug. 18, 1975)
22 IBLA 1 (Sept. 4, 1975)
22 IBLA 6 (Sept. 4, 1975)
22 IBLA 47 (Sept. 16, 1975)
22 IBLA 95 (Sept. 22, 1975)
22 IBLA 130 (Sept. 26, 1975)
22 IBLA 175 (Sept. 30, 1975)
22 IBLA 270 (Oct. 30, 1975)
22 IBLA 277 (Oct. 30, 1975)
22 IBLA 309 (Nov. 10, 1975)
23 IBLA 148 (Dec. 23, 1975)
23 IBLA 224 (Jan. 8, 1976)
23 IBLA 370 (Jan. 23, 1976)
24 IBLA 70 (Feb. 24, 1976)
24 IBLA 73 (Feb. 24, 1976)
24 IBLA 81 (Feb. 25, 1976)
24 IBLA 98 (Feb. 25, 1976)
24 IBLA 105 (Mar. 1, 1976)
24 IBLA 117 (Mar. 1, 1976)
24 IBLA 255 (Mar. 29, 1976)
24 IBLA 269 (Mar. 29, 1976)
24 IBLA 306 (Apr. 5, 1976)
24 IBLA 352 (Apr. 23, 1976)
25 IBLA 54 (May 18, 1976)
25 IBLA 61 (May 28, 1976)
25 IBLA 64 (May 28, 1976)
25 IBLA 147 (June 8, 1976)
25 IBLA 160 (June 14, 1976)
25 IBLA 241 (June 22, 1976)
25 IBLA 280 (June 25, 1976)
25 IBLA 319 (June 30, 1976)
26 IBLA 87 (July 19, 1976)
26 IBLA 91 (July 19, 1976)
26 IBLA 106 (July 26, 1976)
26 IBLA 119 (July 26, 1976)
26 IBLA 169 (Aug. 4, 1976)
26 IBLA 188 (Aug. 10, 1976)
26 IBLA 348 (Sept. 7, 1976)
27 IBLA 360 (Nov. 4, 1976)
28 IBLA 91 (Nov. 12, 1976)
28 IBLA 129 (Nov. 19, 1976)
28 IBLA 132 (Nov. 19, 1976)
28 IBLA 272 (Dec. 20, 1976)
28 IBLA 282 (Dec. 27, 1976
28 IBLA 289 (Dec. 27, 1976)

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sec. 188(b) (Continued)

28 IBLA 394; 84 I.D. 91 (1977)
29 IBLA 30 (Feb. 8, 1977)
29 IBLA 74 (Feb. 23, 1977)
29 IBLA 81 (Feb. 23, 1977)
29 IBLA 141 (Mar. 4, 1977)
29 IBLA 154 (Mar. 4, 1977)
29 IBLA 247 (Mar. 25, 1977)
30 IBLA 11 (Apr. 4, 1977)
30 IBLA 18 (Apr. 7, 1977)
30 IBLA 26 (Apr. 11, 1977)
30 IBLA 28 (Apr. 11, 1977)
30 IBLA 146 (May 16, 1977)
30 IBLA 153 (May 16, 1977)
30 IBLA 227 (May 26, 1977)
30 IBLA 262 (May 31, 1977)
30 IBLA 290 (June 1, 1977)
30 IBLA 379 (June 10, 1977)
31 IBLA 39 (June 21, 1977)
31 IBLA 296 (July 22, 1977)
32 IBLA 93 (Sept. 12, 1977)
32 IBLA 293 (Sept. 28, 1977)
32 IBLA 369 (Oct. 31, 1977)
33 IBLA 22 (Nov. 22, 1977)
33 IBLA 53 (Nov. 25, 1977)
33 IBLA 63 (Dec. 5, 1977)
33 IBLA 271 (Jan. 5, 1978)
34 IBLA 53 (Feb. 16, 1978)
34 IBLA 68 (Feb. 22, 1978)
34 IBLA 73; 85 I.D. 70 (1978)
35 IBLA 58 (May 10, 1978)
35 IBLA 73 (May 12, 1978)
35 IBLA 143 (May 22, 1978)
35 IBLA 177 (May 23, 1978)
35 IBLA 180 (May 23, 1978)
35 IBLA 265 (June 2, 1978)
35 IBLA 297 (June 2, 1978)
35 IBLA 302 (June 2, 1978)
36 IBLA 42 (June 30, 1978)
36 IBLA 70 (June 30, 1978)
36 IBLA 81 (July 12, 1978)
36 IBLA 157 (July 31, 1978)
36 IBLA 191 (Aug. 3, 1978)
36 IBLA 257 (Aug. 15, 1978)
36 IBLA 268 (Aug. 17, 1978)
37 IBLA 52 (Sept. 18, 1978)
37 IBLA 269 (Oct. 19, 1978)
37 IBLA 377 (Nov. 6, 1978)
37 IBLA 392 (Nov. 8, 1978)
38 IBLA 254 (Dec. 8, 1978)
38 IBLA 275 (Dec. 13, 1978)
38 IBLA 291 (Dec. 14, 1978)
38 IBLA 315 (Dec. 19, 1978)
38 IBLA 319 (Dec. 19, 1978)
39 IBLA 161 (Jan. 29, 1979)
40 IBLA 114 (Mar. 27, 1979)
40 IBLA 134 (Mar. 29, 1979)
40 IBLA 147 (Mar. 29, 1979)
40 IBLA 272 (Apr. 18, 1979)
41 IBLA 185 (June 22, 1979)
42 IBLA 148 (Aug. 16, 1979)
42 IBLA 284 (Aug. 27, 1979)
42 IBLA 235 (Aug. 22, 1979)
42 IBLA 304 (Aug. 27, 1979)
43 IBLA 63 (Sept. 18, 1979)
43 IBLA 323 (Oct. 29, 1979)
43 IBLA 255 (Oct. 10, 1979)
43 IBLA 360 (Oct. 29, 1979)
44 IBLA 99 (Nov. 20, 1979)
44 IBLA 133 (Nov. 27, 1979)
44 IBLA 171 (Nov. 30, 1979)
44 IBLA 181 (Nov. 30, 1979)
44 IBLA 188 (Nov. 30, 1979)
44 IBLA 230 (Dec. 11, 1979)

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sec. 188(c)----------18 IBLA 323 (Jan. 6, 1975)
18 IBLA 390 (Feb. 6, 1975)
18 IBLA 404 (Feb. 10, 1975)
18 IBLA 420 (Feb. 12, 1975)
19 IBLA 53 (Feb. 21, 1975)
19 IBLA 188 (Mar. 18, 1975)
19 IBLA 261 (Mar. 31, 1975)
19 IBLA 280 (Apr. 7, 1975)
19 IBLA 305 (Apr. 7, 1975)
19 IBLA 307 (Apr. 7, 1975)
20 IBLA 146 (May 5, 1975)
20 IBLA 206 (May 8, 1975)
20 IBLA 280 (May 22, 1975)
20 IBLA 322 (June 6, 1975)
20 IBLA 361 (June 12, 1975)
20 IBLA 383 (June 12, 1975)
21 IBLA 69 (June 25, 1975)
21 IBLA 287 (Aug. 11, 1975)
21 IBLA 312; 82 I.D. 386 (1975)
21 IBLA 336 (Aug. 18, 1975)
22 IBLA 1 (Sept. 4, 1975)
22 IBLA 47 (Sept. 16, 1975)
22 IBLA 95 (Sept. 22, 1975)
22 IBLA 130 (Sept. 26, 1975)
22 IBLA 175 (Sept. 30, 1975)
22 IBLA 309 (Nov. 10, 1975)
23 IBLA 148 (Dec. 23, 1975)
23 IBLA 224 (Jan. 8, 1976)
23 IBLA 370 (Jan. 23, 1976)
24 IBLA 70 (Feb. 24, 1976)
24 IBLA 81 (Feb. 25, 1976)
24 IBLA 98 (Feb. 25, 1976)
24 IBLA 105 (Mar. 1, 1976)
24 IBLA 117 (Mar. 1, 1976)
24 IBLA 121 (Mar. 1, 1976)
24 IBLA 251; 83 I.D. 106 (1976)
24 IBLA 255 (Mar. 29, 1976)
24 IBLA 269 (Mar. 29, 1976)
24 IBLA 352 (Apr. 23, 1976)
25 IBLA 54 (May 18, 1976)
25 IBLA 61 (May 28, 1976)
25 IBLA 147 (June 8, 1976)
25 IBLA 160 (June 14, 1976)
25 IBLA 241 (June 22, 1976)
25 IBLA 280 (June 25, 1976)
25 IBLA 319 (June 30, 1976)
26 IBLA 87 (July 19, 1976)
26 IBLA 91 (July 19, 1976)
26 IBLA 106 (July 26, 1976)
26 IBLA 169 (Aug. 4, 1976)
26 IBLA 188 (Aug. 10, 1976)
27 IBLA 360 (Nov. 4, 1976)
28 IBLA 91 (Nov. 12, 1976)
28 IBLA 129 (Nov. 19, 1976)
28 IBLA 132 (Nov. 19, 1976)
28 IBLA 272 (Dec. 20, 1976)
28 IBLA 282 (Dec. 27, 1976)
28 IBLA 289 (Dec. 27, 1976)
28 IBLA 394; 84 I.D. 91 (1977)
29 IBLA 81 (Feb. 23, 1977)
29 IBLA 114 (Feb. 23, 1977)
29 IBLA 141 (Mar. 4, 1977)
29 IBLA 182 (Mar. 18, 1977)
30 IBLA 26 (Apr. 11, 1977)
30 IBLA 146 (May 16, 1977)
30 IBLA 153 (May 16, 1977)
30 IBLA 227 (May 26, 1977)
30 IBLA 262 (May 31, 1977)
30 IBLA 290 (June 1, 1977)
32 IBLA 93 (Sept. 12, 1977)
32 IBLA 293 (Sept. 28, 1977)
32 IBLA 296 (Sept. 28, 1977)
32 IBLA 325 (Oct. 11, 1977)
32 IBLA 369 (Oct. 31, 1977)
33 IBLA 63 (Dec. 5, 1977)

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sec. 188(c) (Continued)

33 IBLA 135 (Dec. 19, 1977)
33 IBLA 231 (Dec. 28, 1977)
33 IBLA 285 (Jan. 5, 1978)
34 IBLA 53 (Feb. 16, 1978)
34 IBLA 68 (Feb. 22, 1978)
34 IBLA 132 (Mar. 8, 1978)
34 IBLA 316 (Apr. 24, 1978)
34 IBLA 350 (Apr. 26, 1978)
35 IBLA 58 (May 10, 1978)
35 IBLA 73 (May 12, 1978)
35 IBLA 143 (May 22, 1978)
35 IBLA 177 (May 23, 1978)
35 IBLA 180 (May 23, 1978)
35 IBLA 265 (June 2, 1978)
35 IBLA 302 (June 2, 1978)
36 IBLA 32 (June 27, 1978)
36 IBLA 39 (June 27, 1978)
36 IBLA 42 (June 30, 1978)
36 IBLA 70 (June 30, 1978)
36 IBLA 81 (July 12, 1978)
36 IBLA 191 (Aug. 3, 1978)
36 IBLA 268 (Aug. 17, 1978)
36 IBLA 311 (Aug. 21, 1978)
36 IBLA 331 (Aug. 28, 1978)
36 IBLA 379 (Aug. 31, 1978)
37 IBLA 184 (Oct. 11, 1978)
37 IBLA 269 (Oct. 19, 1978)
37 IBLA 377 (Nov. 6, 1978)
37 IBLA 392 (Nov. 8, 1978)
38 IBLA 115 (Nov. 20, 1978)
38 IBLA 254 (Dec. 8, 1978)
38 IBLA 275 (Dec. 13, 1978)
38 IBLA 291 (Dec. 14, 1978)
38 IBLA 315 (Dec. 19, 1978)
39 IBLA 405 (Mar. 2, 1979)
40 IBLA 5 (Mar. 6, 1979)
40 IBLA 114 (Mar. 27, 1979)
40 IBLA 134 (Mar. 29, 1979)
40 IBLA 147 (Mar. 29, 1979)
41 IBLA 49 (May 29, 1979)
41 IBLA 185 (June 22, 1979)
41 IBLA 188 (June 22, 1979)
41 IBLA 367 (July 23, 1979)
42 IBLA 148 (Aug. 16, 1979)
42 IBLA 235 (Aug. 22, 1979)
42 IBLA 284 (Aug. 27, 1979)
42 IBLA 304 (Aug. 27, 1979)
43 IBLA 19 (Sept. 11, 1979)
43 IBLA 63 (Sept. 18, 1979)
43 IBLA 96 (Sept. 20, 1979)
43 IBLA 255 (Oct. 10, 1979)
43 IBLA 323 (Oct. 29, 1979)
43 IBLA 360 (Oct. 29, 1979)
44 IBLA 21 (Nov. 6, 1979)
44 IBLA 99 (Nov. 20, 1979)
44 IBLA 133 (Nov. 27, 1979)
44 IBLA 188 (Nov. 30, 1979)
44 IBLA 230 (Dec. 11, 1979)
1 SEC. 13; 85 I.D 89 (1978)
188(d) ---------28 IBLA 394; 84 I.D. 91 (1977)
30 IBLA 290 (June 1, 1977)
189 ------------20 IBLA 248 (May 16, 1975)
22 IBLA 52 (Sept. 17, 1975)
24 IBLA 278 (Mar. 30, 1976)
25 IBLA 269 (June 24, 1976)
25 IBLA 306; 83 I.D. 247 (1976)
29 IBLA 170 (Mar. 14, 1977)
30 IBLA 376 (June 10, 1977)
31 IBLA 217 (July 6, 1977)
32 IBLA 199 (Sept. 16, 1977)
33 IBLA 339 (Jan. 16, 1978)
36 IBLA 304 (Aug. 21, 1978)
37 IBLA 195 (Oct. 12, 1978)
37 IBLA 387 (Nov. 6, 1978)

TITLE 30 (Continued)

sec. 189 (Continued)

38 IBLA 23; 85 I.D. 408 (1978)
40 IBLA 144 (Mar. 29, 1979)
42 IBLA 333 (Aug. 30, 1979)
43 IBLA 375 (Oct. 31, 1979)
M-36890; 84 I.D. 244 (1977)
M-36909; 86 I.D. 28 (1979)
191 ------------ 3 ANCAB 11; 85 I.D. 219 (1978)
192 ------------20 IBLA 248 (May 16, 1975)
38 IBLA 182 (Dec. 6, 1978)
193 ------------31 IBLA 72; 84 I.D. 309 (1977)
31 IBLA 150; 84 I.D. 342 (1977)
M-36893; 84 I.D. 442 (1977)
201 ------------37 IBLA 251; 85 I.D. 396 (1978)
40 IBLA 339 (May 10, 1979)
201 *et seq.* ----41 IBLA 139 (June 14, 1979)
M-36900; 86 I.D. 293 (1979)
201(a) ---------18 IBLA 342 (Jan. 13, 1975)
20 IBLA 125 (Apr. 28, 1975)
M-36890; 84 I.D. 244 (1977)
M-36909; 86 I.D. 28 (1979)
201(a)(1) ------ M-36909; 86 I.D. 28 (1979)
201(b) ---------18 IBLA 320 (Jan. 6, 1975)
22 IBLA 60 (Sept. 18, 1975)
25 IBLA 186 (June 14, 1976)
31 IBLA 61 (June 23, 1977)
34 IBLA 139 (Mar. 10, 1978)
35 IBLA 172 (May 23, 1978)
35 IBLA 247; 85 I.D. 161 (1978)
35 IBLA 262 (May 31, 1978)
36 IBLA 334 (Aug. 28, 1978)
37 IBLA 18 (Sept. 12, 1978)
37 IBLA 251; 85 I.D. 396 (1978)
M-36893; 84 I.D. 442 (1977)
M-36893 (Supp.); 86 I.D. 627 (1979)
M-36894; 84 I.D. 415 (1977)
M-36920 (Dec. 11, 1979); 87 I.D. 69 (1980)
201-209 --------43 IBLA 170 (Sept. 28, 1979)
203 ------------22 IBLA 139 (Sept. 26, 1975)
23 IBLA 1 (Nov. 25, 1975)
31 IBLA 290 (July 22, 1977)
32 IBLA 13 (Aug. 29, 1977)
33 IBLA 3 (Nov. 14, 1977)
36 IBLA 62 (June 30, 1978)
204 ------------23 IBLA 1 (Nov. 25, 1975)
31 IBLA 290 (July 22, 1977)
32 IBLA 170 (Sept. 13, 1977)
207 ------------40 IBLA 339 (May 10, 1979)
M-36890; 84 I.D. 244 (1977)
M-36920 (Dec. 11, 1979); 87 I.D. 69 (1980)
207(a) --------- M-36920 (Dec. 11, 1979); 87 I.D. 69 (1980)
209 ------------19 IBLA 1 (Feb. 20, 1975)
40 IBLA 1 (Mar. 6, 1979)
44 IBLA 171 (Nov. 30, 1979)
M-36888 (Supp. II); 84 I.D. 171 (1977)
M-36920 (Dec. 11, 1979); 87 I.D. 69 (1980)
1 SEC. 13; 85 I.D. 89 (1978)
211 ------------23 IBLA 102 (Dec. 23, 1975)
211(a) ---------24 IBLA 271 (Mar. 30, 1976)
211(b) ---------21 IBLA 178 (July 25, 1975)
24 IBLA 271 (Mar. 30, 1976)
24 IBLA 320 (Apr. 20, 1976)
25 IBLA 177 (June 14, 1976)
36 IBLA 334 (Aug. 28, 1978)
M-36893; 84 I.D. 442 (1977)
M-36893 (Supp.); 86 I.D. 627 (1979)
M-36920 (Dec. 11, 1979); 87 I.D. 69 (1980)

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sec. 221 ------------ M-36893; 84 I.D. 442 (1977)
221 et seq. ----30 IBLA 8 (Apr. 4, 1976)
223 ------------20 IBLA 59; 82 I.D. 174 (1975)
20 IBLA 344 (June 11, 1975)
225 ------------28 IBLA 249 (Dec. 20, 1976)
43 IBLA 375 (Oct. 31, 1979)
M-36888; 84 I.D. 54 (1977)
226 ------------ 2 ANCAB 98 (July 15, 1977)
2 ANCAB 115 (July 15, 1977)
2 ANCAB 126 (Aug. 4, 1977)
2 ANCAB 134 (Aug. 4, 1977)
2 ANCAB 247; 84 I.D. 1007 (1977)
2 ANCAB 277 (Jan. 26, 1978)
2 ANCAB 302 (Feb. 21, 1978)
2 ANCAB 316 (Mar. 2, 1978)
3 ANCAB 37 (July 3, 1978)
18 IBLA 326 (Jan. 7, 1975)
18 IBLA 393; 82 I.D. 60 (1975)
19 IBLA 191 (Mar. 18, 1975)
21 IBLA 133 (July 14, 1975)
21 IBLA 304 (Aug. 14, 1975)
24 IBLA 181 (Mar. 16, 1976)
24 IBLA 221 (Mar. 24, 1976)
25 IBLA 107 (June 7, 1976)
26 IBLA 116 (July 26, 1976)
26 IBLA 232 (Aug. 17, 1976)
26 IBLA 340 (Sept. 7, 1976)
27 IBLA 296 (Oct. 26, 1976)
27 IBLA 317; 83 I.D. 533 (1976)
27 IBLA 330; 83 I.D. 538 (1976)
27 IBLA 376 (Nov. 5, 1976)
28 IBLA 79 (Nov. 12, 1976)
28 IBLA 256 (Dec. 20, 1976)
29 IBLA 13 (Feb. 8, 1977)
29 IBLA 259 (Mar. 25, 1977)
29 IBLA 295 (Mar. 30, 1977)
30 IBLA 166; 84 I.D. 192 (1977)
30 IBLA 259 (May 31, 1977)
31 IBLA 150; 84 I.D. 342 (1977)
31 IBLA 167 (July 5, 1977)
31 IBLA 354 (July 25, 1977)
33 IBLA 339 (Jan. 16, 1978)
34 IBLA 7 (Feb. 8, 1978)
34 IBLA 139 (Mar. 10, 1978)
34 IBLA 384 (May 2, 1978)
35 IBLA 205 (May 26, 1978)
36 IBLA 275 (Aug. 21, 1978)
39 IBLA 161 (Jan. 29, 1979)
39 IBLA 332 (Feb. 27, 1979)
39 IBLA 378 (Feb. 28, 1979)
40 IBLA 53 (Mar. 16, 1979)
40 IBLA 152 (Mar. 30, 1979)
40 IBLA 294 (Apr. 27, 1979)
41 IBLA 1 (May 21, 1979)
41 IBLA 277 (June 28, 1979)
43 IBLA 235 (Oct. 10, 1979)
44 IBLA 213 (Dec. 11, 1979)
44 IBLA 292 (Dec. 26, 1979)
M-36920 (Dec. 11, 1979);
87 I.D. 69 (1980)
1 SEC. 1; 84 I.D. 176 (1977)
226 et seq. ----24 IBLA 181 (Mar. 16, 1976)
226(a) ---------20 IBLA 333 (June 11, 1975)
21 IBLA 76 (June 25, 1975)
24 IBLA 28 (Feb. 11, 1976)
24 IBLA 159 (Mar. 15, 1976)
25 IBLA 57 (May 20, 1976)
26 IBLA 340 (Sept. 7, 1976)
31 IBLA 150; 84 I.D. 342 (1977)
33 IBLA 116 (Dec. 16, 1977)
35 IBLA 66 (May 12, 1978)
M-36894; 84 I.D. 415 (1977)
226(b) ---------19 IBLA 125 (Mar. 5, 1975)
21 IBLA 56 (June 18, 1975)
22 IBLA 313 (Nov. 10, 1975)
22 IBLA 379 (Nov. 17, 1975)

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sec. 226(b) (Continued)

24 IBLA 44 (Feb. 23, 1976)
26 IBLA 340 (Sept. 7, 1976)
27 IBLA 224 (Oct. 12, 1976)
27 IBLA 376 (Nov. 4, 1976)
28 IBLA 277 (Dec. 22, 1976)
30 IBLA 123 (May 12, 1977)
31 IBLA 150; 84 I.D. 342 (1977)
31 IBLA 221 (July 7, 1977)
33 IBLA 18 (Nov. 22, 1977)
33 IBLA 293 (Jan. 10, 1978)
34 IBLA 254 (Mar. 28, 1978)
36 IBLA 324 (Aug. 23, 1978)
39 IBLA 386 (Feb. 28, 1979)
40 IBLA 26 (Mar. 9, 1979)
40 IBLA 250 (Apr. 16, 1979)
41 IBLA 81 (May 31, 1979)
M-36888; 84 I.D. 54 (1977)
M-36920 (Dec. 11, 1979);
87 I.D. 69 (1980)
226(b)-226(c) --27 IBLA 269 (Oct. 26, 1976)
27 IBLA 330; 83 I.D. 538 (1976)
226(c) ---------19 IBLA 125 (Mar. 5, 1975)
19 IBLA 320 (Apr. 7, 1975)
21 IBLA 56 (June 18, 1975)
22 IBLA 136 (Sept. 26, 1975)
22 IBLA 220 (Oct. 15, 1975)
22 IBLA 307 (Nov. 10, 1975)
22 IBLA 379 (Nov. 17, 1975)
24 IBLA 12; 83 I.D. 33 (1976)
24 IBLA 76 (Feb. 24, 1976)
24 IBLA 110 (Mar. 1, 1976)
24 IBLA 311 (Apr. 20, 1976)
25 IBLA 34 (May 5, 1976)
25 IBLA 326 (June 30, 1976)
26 IBLA 340 (Sept. 7, 1976)
26 IBLA 382 (Sept. 9, 1976)
27 IBLA 376 (Nov. 5, 1976)
28 IBLA 277 (Dec. 22, 1976)
29 IBLA 1 (Feb. 7, 1977)
29 IBLA 218 (Mar. 22, 1977)
29 IBLA 234 (Mar. 25, 1977)
30 IBLA 70 (Apr. 18, 1977)
30 IBLA 123 (May 12, 1977)
30 IBLA 143 (May 12, 1977)
30 IBLA 288 (June 1, 1977)
30 IBLA 376 (June 10, 1977)
31 IBLA 3 (June 15, 1977)
31 IBLA 58 (June 23, 1977)
31 IBLA 119 (June 24, 1977)
31 IBLA 150; 84 I.D. 342 (1977)
31 IBLA 234 (July 12, 1977)
31 IBLA 386 (Aug. 16, 1977)
32 IBLA 106 (Sept. 12, 1977)
32 IBLA 272 (Sept. 27, 1977)
32 IBLA 341 (Oct. 21, 1977)
32 IBLA 345 (Oct. 21, 1977)
33 IBLA 116 (Dec. 16, 1977)
33 IBLA 150 (Dec. 19, 1977)
33 IBLA 213 (Dec. 21, 1977)
34 IBLA 222 (Mar. 27, 1978)
34 IBLA 237 (Mar. 28, 1978)
34 IBLA 263 (Mar. 31, 1978)
35 IBLA 66 (May 12, 1978)
37 IBLA 52 (Sept. 18, 1978)
37 IBLA 367; 85 I.D. 403 (1978)
38 IBLA 23; 85 I.D. 408 (1978)
38 IBLA 271 (Dec. 13, 1978)
41 IBLA 372 (July 23, 1979)
42 IBLA 21 (July 25, 1979)
43 IBLA 128 (Sept. 26, 1979)
M-36888; 84 I.D. 54 (1977)
M-36920 (Dec. 11, 1979);
87 I.D. 69 (1980)

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sec. 226(d) ---------27 IBLA 210 (Oct. 6, 1976)
28 IBLA 394; 84 I.D. 91 (1977)
30 IBLA 290 (June 1, 1977)
33 IBLA 53 (Nov. 25, 1977)
34 IBLA 53 (Feb. 16, 1978)
38 IBLA 315 (Dec. 19, 1978)
40 IBLA 114 (Mar. 27, 1979)
42 IBLA 235 (Aug. 22, 1979)
M-36920 (Dec. 11, 1979);
87 I.D. 69 (1980)
226(e) ---------20 IBLA 134 (May 5, 1975)
20 IBLA 315 (June 4, 1975)
21 IBLA 147 (July 16, 1975)
25 IBLA 125 (June 7, 1976)
25 IBLA 130 (June 7, 1976)
26 IBLA 202 (Aug. 11, 1976)
28 IBLA 62 (Nov. 10, 1976)
28 IBLA 394; 84 I.D. 91 (1977)
29 IBLA 74 (Feb. 23, 1977)
30 IBLA 179 (May 19, 1977)
30 IBLA 191; 84 I.D. 198 (1977)
30 IBLA 290 (June 1, 1977)
30 IBLA 296 (June 1, 1977)
31 IBLA 18 (June 17, 1977)
31 IBLA 61 (June 23, 1977)
33 IBLA 83 (Dec. 8, 1977)
34 IBLA 7 (Feb. 8, 1978)
34 IBLA 127 (Mar. 7, 1978)
36 IBLA 157 (July 31, 1978)
37 IBLA 129 (Oct. 4, 1978)
37 IBLA 195 (Oct. 12, 1978)
37 IBLA 338 (Oct. 27, 1978)
39 IBLA 153 (Jan. 29, 1979)
40 IBLA 1 (Mar. 6, 1979)
42 IBLA 222 (Aug. 22, 1979)
42 IBLA 235 (Aug. 22, 1979)
43 IBLA 94 (Sept. 19, 1979)
1 SEC. 13; 85 I.D. 89 (1978)
226(f) ---------20 IBLA 134 (May 5, 1975)
25 IBLA 125 (June 7, 1976)
25 IBLA 193 (June 16, 1976)
26 IBLA 202 (Aug. 11, 1976)
29 IBLA 74 (Feb. 23, 1977)
31 IBLA 61 (June 23, 1977)
37 IBLA 338 (Oct. 27, 1978)
40 IBLA 164 (Apr. 3, 1979)
40 IBLA 195 (Apr. 5, 1979)
41 IBLA 191 (June 22, 1979)
1 SEC. 13; 85 I.D. 89 (1978)
226(g) ---------29 IBLA 97 (Feb. 23, 1977)
226(i) --------- M-36888; 84 I.D. 54 (1977)
226(j) ---------19 IBLA 1 (Feb. 20, 1975)
20 IBLA 344 (June 11, 1975)
24 IBLA 227 (Mar. 24, 1976)
25 IBLA 125 (June 7, 1976)
29 IBLA 97 (Feb. 23, 1977)
30 IBLA 179 (May 19, 1977)
30 IBLA 191; 84 I.D. 198 (1977)
30 IBLA 296 (June 1, 1977)
33 IBLA 106 (Dec. 16, 1977)
33 IBLA 296 (Jan. 10, 1978)
34 IBLA 53 (Feb. 16, 1978)
35 IBLA 43 (May 9, 1978)
36 IBLA 157 (July 31, 1978)
36 IBLA 160 (July 31, 1978)
37 IBLA 62 (Sept. 18, 1978)
40 IBLA 195 (Apr. 5, 1979)
42 IBLA 222 (Aug. 22, 1979)
44 IBLA 171 (Nov. 30, 1979)
44 IBLA 292 (Dec. 26, 1979)
226-1 ----------28 IBLA 394; 84 I.D. 91 (1977)
226-1(d) -------20 IBLA 134 (May 5, 1975)
25 IBLA 130 (June 7, 1976)
28 IBLA 394; 84 I.D. 91 (1977)
30 IBLA 191; 84 I.D. 198 (1977)
34 IBLA 7 (Feb. 8, 1978)

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sec. 226-1(d) (Continued)

36 IBLA 253 (Aug. 15, 1978)
37 IBLA 195 (Oct. 12, 1978)
39 IBLA 153 (Jan. 29, 1979)
226-2 ----------22 IBLA 130 (Sept. 26, 1975)
25 IBLA 160 (June 14, 1976)
38 IBLA 23; 85 I.D. 408 (1978)
229 ------------20 IBLA 59; 82 I.D. 174 (1975)
229a -----------28 IBLA 368; 84 I.D. 87 (1977)
M-36914; 86 I.D. 553 (1979)
229a(a) --------28 IBLA 368; 84 I.D. 87 (1977)
M-36914; 86 I.D. 553 (1979)
229a(c) -------- M-36914; 86 I.D. 553 (1979)
241 ------------ M-36920 (Dec. 11, 1979);
87 I.D. 69 (1980)
261 ------------26 IBLA 208 (Aug. 16, 1976)
27 IBLA 4 (Sept. 17, 1976)
27 IBLA 46 (Sept. 23, 1976)
31 IBLA 72; 84 I.D. 309 (1977)
31 IBLA 150; 84 I.D. 342 (1977)
34 IBLA 285; 85 I.D. 171 (1978)
M-36893; 84 I.D. 442 (1977)
262 ------------20 IBLA 59; 82 I.D. 174 (1975)
25 IBLA 153 (June 10, 1976)
26 IBLA 208 (Aug. 16, 1976)
31 IBLA 72; 84 I.D. 309 (1977)
31 IBLA 150; 84 I.D. 342 (1977)
34 IBLA 285; 85 I.D. 171 (1978)
36 IBLA 334 (Aug. 28, 1978)
M-36920 (Dec. 11, 1979);
87 I.D. 69 (1980)
271 ------------29 IBLA 170 (Mar. 14, 1977)
M-36893; 84 I.D. 442 (1977)
271 *et seq.* ----29 IBLA 170 (Mar. 14, 1977)
271-273 -------- M-36893; 84 I.D. 442 (1977)
271-276 -------- M-36920 (Dec. 11, 1979);
87 I.D. 69 (1980)
272 ------------20 IBLA 59; 82 I.D. 174 (1975)
36 IBLA 334 (Aug. 28, 1978)
M-36920 (Dec. 11, 1979);
87 I.D. 69 (1980)
281 ------------ M-36893; 84 I.D. 442 (1977)
281 *et seq.* ----31 IBLA 72; 84 I.D. 309 (1977)
281-287 -------- M-36893; 84 I.D. 442 (1977)
282 ------------20 IBLA 59; 82 I.D. 174 (1975)
34 IBLA 285; 85 I.D. 171 (1978)
36 IBLA 334 (Aug. 28, 1978)
282 *et seq.* ----31 IBLA 72; 84 I.D. 309 (1977)
283 ------------ M-36920 (Dec. 11, 1979);
87 I.D. 69 (1980)
301 ------------24 IBLA 360; 83 I.D. 194 (1976)
36 IBLA 313 (Aug. 23, 1978)
301 *et seq.* ----24 IBLA 166; 83 I.D. 80 (1976)
24 IBLA 360; 83 I.D. 194 (1976)
27 IBLA 137; 83 I.D. 364 (1976)
36 IBLA 313 (Aug. 23, 1978)
301-305 -------- M-36888; 84 I.D. 54 (1977)
301-306 --------35 IBLA 212 (May 26, 1978)
303 ------------24 IBLA 360; 83 I.D. 194 (1976)
36 IBLA 313 (Aug. 23, 1978)
351 *et seq.* ----20 IBLA 292 (May 27, 1975)
22 IBLA 33 (Sept. 10, 1975)
22 IBLA 313 (Nov. 10, 1975)
24 IBLA 218 (Mar. 24, 1976)
32 IBLA 357 (Oct. 21, 1977)
351-359 --------18 IBLA 326 (Jan. 7, 1975)
21 IBLA 185 (July 25, 1975)
21 IBLA 239 (Aug. 11, 1975)
22 IBLA 242 (Oct. 22, 1975)
22 IBLA 289 (Oct. 30, 1975)
23 IBLA 102 (Dec. 23, 1975)
23 IBLA 194 (Jan. 6, 1976)
23 IBLA 312 (Jan. 16, 1976)
24 IBLA 31 (Feb. 17, 1976)
24 IBLA 159 (Mar. 15, 1976)

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sec. 351-359 (Continued)

27 IBLA 208 (Oct. 6, 1976)
28 IBLA 353 (Jan. 24, 1977)
29 IBLA 33 (Feb. 10, 1977)
29 IBLA 319 (Mar. 30, 1977)
29 IBLA 330 (Mar. 31, 1977)
30 IBLA 14 (Apr. 4, 1977)
30 IBLA 187 (May 19, 1977)
30 IBLA 199 (May 20, 1977)
34 IBLA 27 (Feb. 14, 1978)
35 IBLA 137 (May 22, 1978)
42 IBLA 105 (Aug. 16, 1979)
44 IBLA 66 (Nov. 20, 1979)
352 ------------18 IBLA 326 (Jan. 7, 1975)
19 IBLA 261 (Mar. 31, 1975)
21 IBLA 239 (Aug. 11, 1975)
22 IBLA 242 (Oct. 22, 1975)
22 IBLA 289 (Oct. 30, 1975)
22 IBLA 313 (Nov. 10, 1975)
23 IBLA 194 (Jan. 6, 1976)
24 IBLA 31 (Feb. 17, 1976)
25 IBLA 390 (July 6, 1976)
25 IBLA 319 (Mar. 30, 1977)
29 IBLA 330 (Mar. 31, 1977)
33 IBLA 216 (Dec. 22, 1977)
33 IBLA 392 (Jan. 26, 1978)
34 IBLA 27 (Feb. 14, 1978)
37 IBLA 91 (Sept. 22, 1978)
42 IBLA 105 (Aug. 16, 1979)
354 ------------34 IBLA 222 (Mar. 27, 1978)
44 IBLA 99 (Nov. 20, 1979)
355 ------------18 IBLA 326 (Jan. 7, 1975)
359 ------------20 IBLA 272 (May 19, 1975)
22 IBLA 52 (Sept. 17, 1975)
482(a) --------- 5 IBMA 185; 82 I.D. 506 (1975)
501 ------------23 IBLA 41 (Dec. 2, 1975)
39 IBLA 306 (Feb. 23, 1979)
42 IBLA 364 (Sept. 11, 1979)
44 IBLA 25 (Nov. 6, 1979)
501(a) ---------43 IBLA 210; 86 I.D. 538 (1979)
501-505 -------- M-36893; 84 I.D. 442 (1977)
502 ------------23 IBLA 41 (Dec. 2, 1975)
521 ------------39 IBLA 306 (Feb. 23, 1979)
42 IBLA 364 (Sept. 11, 1979)
44 IBLA 25 (Nov. 6, 1979)
521 _et seq._ ----23 IBLA 41 (Dec. 2, 1975)
34 IBLA 278 (Apr. 17, 1978)
34 IBLA 285; 85 I.D. 171 (1978)
521(a) ---------43 IBLA 210; 86 I.D. 538 (1979)
521-530 --------26 IBLA 249 (Aug. 18, 1976)
521-531 --------42 IBLA 364 (Sept. 11, 1979)
M-36893; 84 I.D. 442 (1977)
M-36893 (Supp.); 86 I.D. 627 (1979)
524 ------ -----23 IBLA 41 (Dec. 2, 1975)
34 IBLA 285; 85 I.D. 171 (1978)
525 ------------34 IBLA 285; 85 I.D. 171 (1978)
42 IBLA 364 (Sept. 11, 1979)
530 ------------34 IBLA 285; 85 I.D. 171 (1978)
36 IBLA 307 (Aug. 21, 1978)
532 ------------41 IBLA 277 (June 28, 1979)
541 _et seq._ ---34 IBLA 285; 85 I.D. 171 (1978)
601 ------------ 3 ANCAB 49; 85 I.D. 229 (1978)
19 IBLA 9; 82 I.D. 68 (1975)
19 IBLA 326 (Apr. 7, 1975)
22 IBLA 62 (Sept. 18, 1975)
25 IBLA 123 (June 7, 1976)
28 IBLA 13 (Nov. 8, 1976)
29 IBLA 357; 84 I.D. 137 (1977)
32 IBLA 225 (Sept. 20, 1977)
35 IBLA 146; 85 I.D. 129 (1978)
38 IBLA 151 (Dec. 5, 1978)
39 IBLA 205 (Feb. 2, 1979)
601 _et seq._ ----20 IBLA 47 (Apr. 21, 1975)
25 IBLA 164 (June 14, 1976)

TITLE 30 (Continued)

sec. 601 _et seq._ (Continued)

26 IBLA 197 (Aug. 11, 1976)
29 IBLA 333 (Mar. 31, 1977)
29 IBLA 357; 84 I.D. 137 (1977)
32 IBLA 299 (Sept. 29, 1977)
33 IBLA 153 (Dec. 19, 1977)
33 IBLA 259 (Jan. 5, 1978)
34 IBLA 244 (Mar. 28, 1978)
34 IBLA 285; 85 I.D. 171 (1978)
35 IBLA 133 (May 22, 1978)
35 IBLA 146; 85 I.D. 129 (1978)
38 IBLA 390 (Jan. 8, 1979)
601-603 --------35 IBLA 146; 85 I.D. 129 (1978)
601-615 --------21 IBLA 204 (July 30, 1975)
25 IBLA 199 (June 16, 1976)
602 ------------ 3 ANCAB 49; 85 I.D. 229 (1978)
38 IBLA 151 (Dec. 5, 1978)
611 ------------19 IBLA 9; 82 I.D. 68 (1975)
19 IBLA 326 (Apr. 7, 1975)
21 IBLA 166 (July 22, 1975)
21 IBLA 363; 82 I.D. 414 (1975)
22 IBLA 62 (Sept. 18, 1975)
23 IBLA 319 (Jan. 19, 1976)
23 IBLA 378 (Feb. 4, 1976)
25 IBLA 199 (June 16, 1976)
26 IBLA 197 (Aug. 11, 1976)
27 IBLA 65 (Sept. 29, 1976)
27 IBLA 133 (Sept. 29, 1976)
28 IBLA 13 (Nov. 8, 1976)
28 IBLA 187; 83 I.D. 609 (1976)
29 IBLA 333 (Mar. 31, 1977)
29 IBLA 357; 84 I.D. 137 (1977)
30 IBLA 112 (May 2, 1977)
31 IBLA 8 (June 15, 1977)
32 IBLA 46 (Sept. 2, 1977)
34 IBLA 285; 85 I.D. 171 (1978)
34 IBLA 381 (May 2, 1978)
35 IBLA 95 (May 15, 1978)
35 IBLA 146; 85 I.D. 129 (1978)
36 IBLA 194 (Aug. 3, 1978)
37 IBLA 107 (Sept. 29, 1978)
37 IBLA 277 (Oct. 20, 1978)
38 IBLA 214; 85 I.D. 441 (1978)
39 IBLA 337 (Feb. 28, 1979)
42 IBLA 364 (Sept. 11, 1979)
44 IBLA 25 (Nov. 6, 1979)
44 IBLA 142 (Nov. 30, 1979)
611 _et seq._ ----19 IBLA 9; 82 I.D. 68 (1975)
21 IBLA 296 (Aug. 11, 1975)
24 IBLA 354 (Apr. 26, 1976)
28 IBLA 13 (Nov. 8, 1976)
31 IBLA 8 (June 15, 1977)
32 IBLA 46 (Sept. 2, 1977)
611-615 --------25 IBLA 287; 83 I.D. 249 (1976)
26 IBLA 249 (Aug. 18, 1976)
31 IBLA 47 (June 23, 1977)
32 IBLA 46 (Sept. 2, 1977)
34 IBLA 387 (May 3, 1978)
612 ------------21 IBLA 204 (July 30, 1975)
24 IBLA 354 (Apr. 26, 1976)
26 IBLA 223 (Aug. 17, 1976)
31 IBLA 47 (June 23, 1977)
34 IBLA 278 (Apr. 17, 1978)
612(a) ---------20 IBLA 156 (May 5, 1975)
612(b) ---------27 IBLA 278; 83 I.D. 518 (1976)
612-613 --------26 IBLA 300 (Aug. 27, 1976)
613 ------------24 IBLA 354 (Apr. 26, 1976)
25 IBLA 368 (July 6, 1976)
26 IBLA 223 (Aug. 17, 1976)
31 IBLA 47 (June 23, 1977)
37 IBLA 7 (Sept. 6, 1978)
621 ------------19 IBLA 255 (Mar. 31, 1975)
26 IBLA 183 (Aug. 10, 1976)
31 IBLA 357 (July 25, 1977)
34 IBLA 258 (Mar. 30, 1978)

TITLE 30 (Continued)

sec. 621 (Continued)

38 IBLA 90 (Nov. 15, 1978)
43 IBLA 382 (Oct. 31, 1979)
43 IBLA 390 (Oct. 31, 1979)
621 *et seq.* ----19 IBLA 255 (Mar. 31, 1975)
26 IBLA 137 (Aug. 2, 1976)
26 IBLA 223 (Aug. 17, 1976)
29 IBLA 201 (Mar. 22, 1977)
32 IBLA 305 (Sept. 30, 1977)
34 IBLA 179 (Mar. 14, 1978)
621(a)----------25 IBLA 188 (June 14, 1976)
32 IBLA 305 (Sept. 30, 1977)
34 IBLA 258 (Mar. 30, 1978)
621(b) ---------20 IBLA 100 (Apr. 25, 1975)
25 IBLA 188 (June 14, 1976)
34 IBLA 258 (Mar. 30, 1978)
621(c) ---------26 IBLA 223 (Aug. 17, 1976)
621-625 --------25 IBLA 157 (June 10, 1976)
25 IBLA 188 (June 14, 1976)
26 IBLA 183 (Aug. 10, 1976)
26 IBLA 249 (Aug. 18, 1976)
28 IBLA 286 (Dec. 27, 1976)
31 IBLA 357 (July 25, 1977)
40 IBLA 30 (Mar. 15, 1979)
43 IBLA 153 (Sept. 28, 1979)
M-36893 (Supp.); 86 I.D. 627 (1979)
623 ------------20 IBLA 100 (Apr. 25, 1975)
25 IBLA 188 (June 14, 1976)
32 IBLA 305 (Sept. 30, 1977)
623-624 --------19 IBLA 255 (Mar. 31, 1975)
625 ------------20 IBLA 156 (May 5, 1975)
641-646 --------20 IBLA 352 (June 11, 1975)
643 ------------20 IBLA 352 (June 11, 1975)
701 ------------21 IBLA 24 (June 16, 1975)
23 IBLA 23 (Dec. 1, 1975)
28 IBLA 339 (Jan. 17, 1977)
31 IBLA 342 (July 22, 1977)
32 IBLA 145 (Sept. 12, 1977)
36 IBLA 93 (July 12, 1978)
701 *et seq.* ----18 IBLA 385 (Jan. 31, 1975)
21 IBLA 24 (June 16, 1975)
21 IBLA 217 (July 31, 1975)
23 IBLA 23 (Dec. 1, 1975)
26 IBLA 205 (Aug. 16, 1976)
26 IBLA 270 (Aug. 24, 1976)
28 IBLA 339 (Jan. 17, 1977)
30 IBLA 82 (Apr. 27, 1977)
36 IBLA 93 (July 12, 1978)
701-709 --------20 IBLA 156 (May 5, 1975)
702 ------------21 IBLA 24 (June 16, 1975)
21 IBLA 217 (July 31, 1975)
23 IBLA 23 (Dec. 1, 1975)
26 IBLA 270 (Aug. 24, 1976)
28 IBLA 339 (Jan. 17, 1977)
36 IBLA 93 (July 12, 1978)
703 ------------21 IBLA 24 (June 16, 1975)
36 IBLA 93 (July 12, 1978)
704 ------------26 IBLA 205 (Aug. 16, 1976)
706 ------------30 IBLA 82 (Apr. 27, 1977)
706(b) ---------28 IBLA 339 (Jan. 17, 1977)
721 *et seq.* ---- 8 IBMA 31 (June 30, 1977)
721-740 -------- 4 IBMA 127 (Apr. 29, 1975)
727(a) --------- 6 IBMA 99 (Mar. 30, 1976)
8 IBMA 31 (June 30, 1977)
727(c) --------- 8 IBMA 31 (June 30, 1977)
728 ------------ 6 IBMA 288; 83 I.D. 329 (1976)
7 IBMA 120 (Dec. 9, 1976)
728(a) --------- 6 IBMA 288; 83 I.D. 329 (1976)
729(a) --------- 6 IBMA 288; 83 I.D. 329 (1976)
730 ------------ 6 IBMA 288; 83 I.D. 329 (1976)
7 IBMA 120 (Dec. 9, 1976)
735(e) --------- 8 IBMA 31 (June 30, 1977)
801 *et seq.* ---- 4 IBMA 30; 82 I.D. 36 (1975)
4 IBMA 273; 82 I.D. 295 (1975)

TITLE 30 (Continued)

sec. 801(g)(2) ------ 5 IBMA 217; 82 I.D. 535 (1975)
801(j) --------- 6 IBMA 256; 83 I.D. 294 (1976)
801-960 -------- 4 IBMA 30; 82 I.D. 36 (1975)
4 IBMA 52; 82 I.D. 89 (1975)
4 IBMA 61; 82 I.D. 96 (1975)
4 IBMA 130; 82 I.D. 195 (1975)
4 IBMA 166; 82 I.D. 234 (1975)
4 IBMA 175; 82 I.D. 246 (1975)
4 IBMA 198; 82 I.D. 264 (1975)
4 IBMA 224; 82 I.D. 277 (1975)
4 IBMA 252 (June 16, 1975)
4 IBMA 255 (June 18, 1975)
4 IBMA 273; 82 I.D. 295 (1975)
4 IBMA 298; 82 I.D. 311 (1975)
5 IBMA 1 (July 15, 1975)
5 IBMA 5; 82 I.D. 349 (1975)
5 IBMA 12; 82 I.D. 353 (1975)
5 IBMA 34 (July 30, 1975)
5 IBMA 36; 82 I.D. 362 (1975)
5 IBMA 65; 82 I.D. 375 (1975)
5 IBMA 132; 82 I.D. 441 (1975)
5 IBMA 144; 82 I.D. 445 (1975)
5 IBMA 165 (Sept. 26, 1975)
5 IBMA 229 (Nov. 14, 1975)
5 IBMA 276; 82 I.D. 598 (1975)
5 IBMA 304 (Dec. 15, 1975)
5 IBMA 338; 82 I.D. 622 (1975)
5 IBMA 346; 82 I.D. 632 (1975)
5 IBMA 356; 82 I.D. 636 (1975)
6 IBMA 1; 83 I.D. 28 (1976)
6 IBMA 14; 93 I.D. 37 (1976)
6 IBMA 20; 83 I.D. 39 (1976)
6 IBMA 64; 83 I.D. 77 (1976)
6 IBMA 86; 83 I.D. 91 (1976)
6 IBMA 132; 83 I.D. 204 (1976)
6 IBMA 168 (May 27, 1976)
6 IBMA 182; 83 I.D. 232 (1976)
6 IBMA 240; 83 I.D. 232 (1976)
6 IBMA 252 (July 13, 1976)
6 IBMA 256; 83 I.D. 294 (1976)
6 IBMA 319; 83 I.D. 350 (1976)
7 IBMA 98; 83 I.D. 579 (1976)
7 IBMA 331; 84 I.D. 208 (1977)
8 IBMA 19; 84 I.D. 332 (1977)
8 IBMA 55 (June 30, 1977)
8 IBMA 64; 84 I.D. 394 (1977)
8 IBMA 88; 84 I.D. 454 (1977)
8 IBMA 98; 84 I.D. 459 (1977)
8 IBMA 136; 84 I.D. 488 (1977)
8 IBMA 156; 84 I.D. 825 (1977)
8 IBMA 245; 85 I.D. 36 (1978)
802 ------------ 4 IBMA 139; 82 I.D. 221 (1975)
7 IBMA 280; 84 I.D. 127 (1977)
802(a) --------- 7 IBMA 121; 83 I.D. 690 (1976)
802(b) --------- 5 IBMA 217; 82 I.D. 535 (1975)
802(d) --------- 5 IBMA 217; 82 I.D. 535 (1975)
5 IBMA 306; 82 I.D. 607 (1975)
5 IBMA 329; 82 I.D. 618 (1975)
6 IBMA 351; 83 I.D. 409 (1976)
8 IBMA 136; 84 I.D. 488 (1977)
802(g) --------- 5 IBMA 217; 82 I.D. 535 (1975)
802(h) --------- 5 IBMA 306; 82 I.D. 607 (1975)
6 IBMA 351; 83 I.D. 409 (1976)
802(j) --------- 4 IBMA 198; 82 I.D. 264 (1975)
802(*l*) --------- 6 IBMA 100; 83 I.D. 108 (1976)
6 IBMA 163; 83 I.D. 225 (1976)
803 ------------ 5 IBMA 217; 82 I.D. 535 (1975)
5 IBMA 306; 82 I.D. 607 (1975)
6 IBMA 351; 83 I.D. 409 (1976)
811 ------------ 5 IBMA 231; 82 I.D. 553 (1975)
6 IBMA 100; 83 I.D. 108 (1976)
7 IBMA 14; 83 I.D. 425 (1976)
7 IBMA 133; 83 I.D. 695 (1976)
811(a) --------- 5 IBMA 231; 82 I.D. 553 (1975)
6 IBMA 351; 83 I.D. 409 (1976)
811(d) --------- 6 IBMA 121; 83 I.D. 175 (1976)

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TITLE 30 (Continued)

sec. 811(j)	5 IBMA 185; 82 I.D. 506 (1975)
813(d)	21 IBLA 363; 82 I.D. 414 (1975)
	5 IBMA 74; 82 I.D. 392 (1975)
	5 IBMA 113 (Sept. 4, 1975)
813(e)	5 IBMA 74; 82 I.D. 392 (1975)
	5 IBMA 113 (Sept. 4, 1975)
	8 IBMA 156; 84 I.D. 825 (1977)
	8 IBMA 230; 84 I.D. 1003 (1977)
	8 IBMA 238 (Dec. 21, 1977)
813(f)	5 IBMA 74; 82 I.D. 392 (1975)
	5 IBMA 113 (Sept. 4, 1975)
	8 IBMA 320; 84 I.D. 1003 (1977)
813(g)	6 IBMA 28; 83 I.D. 59 (1976)
	6 IBMA 267 (Aug. 12, 1976)
814	5 IBMA 74; 82 I.D. 392 (1975)
	5 IBMA 356; 82 I.D. 636 (1975)
	6 IBMA 14; 83 I.D. 37 (1976)
	6 IBMA 100; 83 I.D. 108 (1976)
	7 IBMA 121; 83 I.D. 690 (1976)
814(a)	4 IBMA 1; 82 I.D. 22 (1975)
	4 IBMA 52; 82 I.D. 89 (1975)
	4 IBMA 88; 82 I.D. 111 (1975)
	4 IBMA 104; 82 I.D. 160 (1975)
	4 IBMA 259; 82 I.D. 578 (1975)
	5 IBMA 51; 82 I.D. 368 (1975)
	5 IBMA 259; 82 I.D. 578 (1975)
	6 IBMA 240; 83 I.D. 264 (1976)
	6 IBMA 256; 83 I.D. 294 (1976)
	6 IBMA 351; 83 I.D. 409 (1976)
814(b)	4 IBMA 30; 82 I.D. 36 (1975)
	5 IBMA 306; 82 I.D. 607 (1975)
	6 IBMA 100; 83 I.D. 108 (1976)
	6 IBMA 193; 83 I.D. 236 (1976)
	6 IBMA 267 (Aug. 12, 1976)
	6 IBMA 294; 83 I.D. 335 (1976)
	7 IBMA 109; 83 I.D. 584 (1976)
	7 IBMA 121; 83 I.D. 690 (1976)
	7 IBMA 234 (Feb. 7, 1977)
	7 IBMA 257; 84 I.D. 103 (1977)
	7 IBMA 272; 84 I.D. 124 (1977)
	7 IBMA 280; 84 I.D. 127 (1977)
	8 IBMA 255; 85 I.D. 63 (1978)
814(c)	5 IBMA 211; 82 I.D. 525 (1975)
	5 IBMA 217; 82 I.D. 535 (1975)
	5 IBMA 306; 82 I.D. 607 (1975)
	6 IBMA 100; 83 I.D. 108 (1976)
	6 IBMA 193; 83 I.D. 236 (1976)
	7 IBMA 224 (Dec. 28, 1976)
	7 IBMA 279 (Mar. 31, 1977)
	7 IBMA 280; 84 I.D. 127 (1977)
	7 IBMA 299 (Mar. 31, 1977)
	7 IBMA 300 (Mar. 31, 1977)
	8 IBMA 98; 84 I.D. 459 (1977)
814(c)(1)	4 IBMA 139; 82 I.D. 221 (1975)
	4 IBMA 184; 82 I.D. 250 (1975)
	5 IBMA 19; 82 I.D. 355 (1975)
	5 IBMA 100; 82 I.D. 409 (1975)
	5 IBMA 231; 82 I.D. 553 (1975)
	6 IBMA 182; 83 I.D. 232 (1976)
	6 IBMA 229; 83 I.D. 260 (1976)
	6 IBMA 234; 83 I.D. 262 (1976)
	7 IBMA 85; 83 I.D. 574 (1976)
	7 IBMA 224 (Dec. 28, 1976)
	7 IBMA 228 (Dec. 30, 1976)
	7 IBMA 280; 84 I.D. 127 (1977)
	8 IBMA 136; 84 I.D. 488 (1977)
814(c)(2)	4 IBMA 184; 82 I.D. 250 (1975)
	6 IBMA 182; 83 I.D. 232 (1976)
	6 IBMA 229; 83 I.D. 260 (1976)
	6 IBMA 234; 83 I.D. 262 (1976)
	7 IBMA 224 (Dec. 28, 1976)
	7 IBMA 228 (Dec. 30, 1976)
814(d)	4 IBMA 198; 82 I.D. 264 (1975)
814(e)	4 IBMA 184; 82 I.D. 250 (1975)
	5 IBMA 259; 82 I.D. 578 (1975)

TITLE 30 (Continued)

sec. 814(g)	4 IBMA 1; 82 I.D. 22 (1975)
	6 IBMA 193; 83 I.D. 236 (1976)
	6 IBMA 267 (Aug. 12, 1976)
	7 IBMA 234 (Feb. 7, 1977)
814(i)	7 IBMA 14; 83 I.D. 425 (1976)
	7 IBMA 133; 83 I.D. 695 (1976)
	7 IBMA 152 (Dec. 20, 1976)
815	4 IBMA 104; 82 I.D. 160 (1975)
	4 IBMA 139; 82 I.D. 221 (1975)
	4 IBMA 198; 82 I.D. 264 (1975)
	5 IBMA 19; 82 I.D. 355 (1975)
	5 IBMA 74; 82 I.D. 392 (1975)
	5 IBMA 100; 82 I.D. 409 (1975)
	5 IBMA 113 (Sept. 4, 1975)
	5 IBMA 306; 82 I.D. 607 (1975)
	6 IBMA 121; 83 I.D. 175 (1976)
	6 IBMA 193; 83 I.D. 236 (1976)
	6 IBMA 267 (Aug. 12, 1976)
	7 IBMA 224 (Dec. 28, 1976)
	7 IBMA 228 (Dec. 30, 1976)
	7 IBMA 272; 84 I.D. 124 (1977)
815(a)	4 IBMA 139; 82 I.D. 221 (1975)
	4 IBMA 184; 82 I.D. 250 (1975)
	5 IBMA 19; 82 I.D. 355 (1975)
	5 IBMA 51; 82 I.D. 368 (1975)
	5 IBMA 74; 82 I.D. 392 (1975)
	5 IBMA 98 (Aug. 19, 1975)
	5 IBMA 100; 82 I.D. 409 (1975)
	5 IBMA 306; 82 I.D. 607 (1975)
	6 IBMA 14; 83 I.D. 37 (1976)
	6 IBMA 121; 83 I.D. 175 (1976)
	7 IBMA 254 (Mar. 15, 1977)
	8 IBMA 136; 84 I.D. 488 (1977)
	8 IBMA 164; 84 I.D. 877 (1977)
815(a)(1)	4 IBMA 1; 82 I.D. 22 (1975)
	4 IBMA 30; 82 I.D. 36 (1975)
	5 IBMA 306; 82 I.D. 607 (1975)
	6 IBMA 193; 83 I.D. 236 (1976)
	7 IBMA 121; 83 I.D. 690 (1976)
815(b)	4 IBMA 1; 82 I.D. 22 (1975)
	6 IBMA 294; 83 I.D. 335 (1976)
815(c)	4 IBMA 1; 82 I.D. 22 (1975)
815(d)	5 IBMA 306; 82 I.D. 607 (1975)
	7 IBMA 272; 84 I.D. 124 (1977)
816	5 IBMA 36; 82 I.D. 362 (1975)
	5 IBMA 74; 82 I.D. 392 (1975)
	5 IBMA 113 (Sept. 4, 1975)
	5 IBMA 306; 82 I.D. 607 (1975)
	7 IBMA 280; 84 I.D. 127 (1977)
816(a)	5 IBMA 74; 82 I.D. 392 (1975)
816(b)	5 IBMA 74; 82 I.D. 392 (1975)
817	4 IBMA 241; 82 I.D. 284 (1975)
817(d)	5 IBMA 306; 82 I.D. 607 (1975)
818	4 IBMA 1; 82 I.D. 22 (1975)
819	4 IBMA 184; 82 I.D. 250 (1975)
	4 IBMA 241; 82 I.D. 284 (1975)
	5 IBMA 3 (July 25, 1975)
	5 IBMA 3A (Aug. 15, 1975)
	5 IBMA 72 (Aug. 11, 1975)
	5 IBMA 74; 82 I.D. 392 (1975)
	5 IBMA 185; 82 I.D. 506 (1975)
	5 IBMA 306; 82 I.D. 607 (1975)
	6 IBMA 78; 83 I.D. 88 (1976)
	6 IBMA 193; 83 I.D. 236 (1976)
	6 IBMA 272 (Sept. 8, 1976)
	6 IBMA 294; 83 I.D. 335 (1976)
	6 IBMA 351; 83 I.D. 409 (1976)
	7 IBMA 14; 83 I.D. 425 (1976)
	7 IBMA 71; 83 I.D. 551 (1976)
	7 IBMA 133; 83 I.D. 695 (1976)
	7 IBMA 257; 84 I.D. 103 (1977)
	7 IBMA 307 (May 5, 1977)
	8 IBMA 27 (June 29, 1977)
	8 IBMA 204; 84 I.D. 919 (1977)
	8 IBMA 230; 84 I.D. 1003 (1977)
	8 IBMA 255; 85 I.D. 63 (1978)

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sec. 819(a)	4 IBMA 112; 82 I.D. 163 (1975)
	5 IBMA 259; 82 I.D. 578 (1975)
	5 IBMA 268; 82 I.D. 581 (1975)
	5 IBMA 293; 82 I.D. 602 (1975)
	5 IBMA 338; 82 I.D. 622 (1975)
	6 IBMA 145 (May 19, 1976)
	6 IBMA 150 (May 27, 1976)
	6 IBMA 153; 83 I.D. 220 (1976)
	6 IBMA 263 (Aug. 2, 1976)
	7 IBMA 64; 83 I.D. 526 (1976)
	7 IBMA 245; 84 I.D. 99 (1977)
819(a)(1)	4 IBMA 198; 82 I.D. 264 (1975)
	5 IBMA 141 (Sept. 22, 1975)
	5 IBMA 185; 82 I.D. 506 (1975)
	6 IBMA 75 (Mar. 22, 1976)
	6 IBMA 86; 83 I.D. 91 (1976)
	6 IBMA 212; 83 I.D. 245 (1976)
	7 IBMA 98; 83 I.D. 579 (1976)
819(a)(3)	4 IBMA 198; 82 I.D. 264 (1975)
	5 IBMA 185; 82 I.D. 506 (1975)
	7 IBMA 14; 83 I.D. 425 (1976)
819(a)(4)	5 IBMA 115; 82 I.D. 434 (1975)
	5 IBMA 306; 82 I.D. 607 (1975)
	7 IBMA 14; 83 I.D. 425 (1976)
	7 IBMA 133; 83 I.D. 695 (1976)
819(b)	4 IBMA 139; 82 I.D. 221 (1975)
819(c)	5 IBMA 115; 82 I.D. 434 (1975)
	8 IBMA 216; 84 I.D. 960 (1977)
820	5 IBMA 74; 82 I.D. 392 (1975)
	6 IBMA 351; 83 I.D. 409 (1976)
820(a)	4 IBMA 1; 82 I.D. 22 (1975)
	4 IBMA 259; 82 I.D. 289 (1975)
	5 IBMA 74; 82 I.D. 392 (1975)
	6 IBMA 71; 83 I.D. 87 (1976)
820(b)	7 IBMA 121; 83 I.D. 690 (1976)
	7 IBMA 238 (Feb. 28, 1977)
	8 IBMA 43; 84 I.D. 336 (1977)
820(b)(1)	6 IBMA 28; 83 I.D. 59 (1976)
	7 IBMA 172; 83 I.D. 710 (1976)
	8 IBMA 164; 84 I.D. 877 (1977)
820(b)(1)(A)	5 IBMA 306; 82 I.D. 607 (1975)
	6 IBMA 28; 83 I.D. 59 (1976)
	7 IBMA 172; 83 I.D. 710 (1976)
	8 IBMA 43; 84 I.D. 336 (1977)
820(b)(2)	6 IBMA 28; 83 I.D. 59 (1976)
	7 IBMA 172; 83 I.D. 710 (1976)
	8 IBMA 164; 84 I.D. 877 (1977)
821	8 IBMA 230; 84 I.D. 1003 (1977)
841	6 IBMA 121; 83 I.D. 175 (1976)
	7 IBMA 14; 83 I.D. 425 (1976)
841(a)	6 IBMA 121; 83 I.D. 175 (1976)
	6 IBMA 319; 83 I.D. 350 (1976)
	7 IBMA 133; 83 I.D. 695 (1976)
841(b)	7 IBMA 14; 83 I.D. 425 (1976)
841-846	7 IBMA 121; 83 I.D. 690 (1976)
842(a)	7 IBMA 14; 83 I.D. 425 (1976)
842(b)	7 IBLA 14; 83 I.D. 425 (1976)
842(b)(1)	7 IBMA 14; 83 I.D. 425 (1976)
	7 IBLA 133; 83 I.D. 695 (1976)
842(b)(2)	7 IBLA 152 (Dec. 20, 1976)
842(e)	7 IBMA 14; 83 I.D. 425 (1976)
842(f)	7 IBMA 14; 83 I.D. 425 (1976)
842-846	7 IBMA 14; 83 I.D. 425 (1976)
843(b)(3)	7 IBMA 121; 83 I.D. 690 (1976)
861	5 IBMA 74; 82 I.D. 392 (1975)
861(a)	6 IBMA 100; 83 I.D. 108 (1976)
861(c)	4 IBMA 74; 82 I.D. 102 (1975)
	4 IBMA 130; 82 I.D. 195 (1975)
	5 IBMA 36; 82 I.D. 362 (1975)
	5 IBMA 74; 82 I.D. 392 (1975)
	5 IBMA 231; 82 I.D. 553 (1975)
	6 IBMA 100; 83 I.D. 108 (1976)
	6 IBMA 121; 83 I.D. 175 (1976)
	6 IBMA 163; 83 I.D. 225 (1976)
	6 IBMA 343; 83 I.D. 405 (1976)
861(d)	4 IBMA 74; 82 I.D. 102 (1975)
	5 IBMA 231; 82 I.D. 553 (1975)

TITLE 30 (Continued)

sec. 861(d) (Continued)

	6 IBMA 100; 83 I.D. 108 (1976)
	6 IBMA 121; 83 I.D. 175 (1976)
862	6 IBMA 100; 83 I.D. 108 (1976)
862(a)	4 IBMA 184; 82 I.D. 250 (1975)
	5 IBMA 231; 82 I.D. 553 (1975)
	6 IBMA 100; 83 I.D. 108 (1976)
	7 IBMA 71; 83 I.D. 551 (1976)
862(c)	6 IBMA 100; 83 I.D. 108 (1976)
863	8 IBLA 136; 84 I.D. 488 (1977)
863(b)	6 IBMA 329; 83 I.D. 399 (1976)
863(d)(1)	8 IBMA 136; 84 I.D. 488 (1977)
863(h)(1)	5 IBMA 293; 82 I.D. 602 (1975)
863(o)	6 IBMA 163; 83 I.D. 225 (1976)
864(a)	4 IBMA 52; 82 I.D. 89 (1975)
	4 IBMA 139; 82 I.D. 221 (1975)
	6 IBMA 294; 83 I.D. 335 (1976)
	8 IBMA 98; 84 I.D. 459 (1977)
864(d)	7 IBMA 14; 83 I.D. 425 (1976)
865(a)(12)(c)	7 IBMA 14; 83 I.D. 425 (1976)
865(d)	5 IBMA 170; 82 I.D. 457 (1975)
865(g)	5 IBMA 155; 82 I.D. 450 (1975)
865(o)	7 IBMA 14; 83 I.D. 425 (1976)
868(b)	4 IBMA 273; 82 I.D. 295 (1975)
870(d)	22 IBLA 44 (Sept. 15, 1975)
871	7 IBMA 57; 83 I.D. 515 (1976)
871(c)	5 IBMA 304 (Dec. 15, 1975)
873(a)	5 IBMA 115; 82 I.D. 434 (1975)
874(f)	4 IBMA 74; 82 I.D. 102 (1975)
876	5 IBMA 268; 82 I.D. 581 (1975)
877(j)	7 IBMA 331; 84 I.D. 208 (1977)
877(1)	6 IBMA 100; 83 I.D. 108 (1976)
	6 IBMA 121; 83 I.D. 175 (1976)
878	6 IBMA 121; 83 I.D. 175 (1976)
	7 IBMA 14; 83 I.D. 425 (1976)
878(g)(1)	5 IBMA 293; 82 I.D. 602 (1975)
878(g)(2)	5 IBMA 293; 82 I.D. 602 (1975)
878(i)	5 IBMA 185; 82 I.D. 506 (1975)
	7 IBMA 14; 83 I.D. 425 (1976)
878(k)	7 IBMA 14; 83 I.D. 425 (1976)
	7 IBMA 133; 83 I.D. 695 (1976)
	7 IBMA 152 (Dec. 20, 1976)
938	7 IBMA 121; 83 I.D. 690 (1976)
956	5 IBMA 74; 82 I.D. 392 (1975)
	5 IBMA 306; 82 I.D. 607 (1975)
	6 IBMA 100; 83 I.D. 108 (1976)
957	5 IBMA 306; 82 I.D. 607 (1975)
	6 IBMA 71; 83 I.D. 551 (1976)
	6 IBMA 100; 83 I.D. 108 (1976)
	6 IBMA 163; 83 I.D. 225 (1976)
	7 IBMA 14; 83 I.D. 425 (1976)
	8 IBMA 230; 84 I.D. 1003 (1977)
1001	27 IBLA 269 (Oct. 26, 1976)
1001 *et seq.*	24 IBLA 221 (Mar. 24, 1976)
	29 IBLA 210 (Mar. 22, 1977)
	33 IBLA 160 (Dec. 20, 1977)
	35 IBLA 29 (May 5, 1978)
	38 IBLA 373 (Dec. 29, 1978)
	41 IBLA 367 (July 23, 1979)
1001(e)	21 IBLA 304 (Aug. 14, 1975)
	24 IBLA 44 (Feb. 23, 1976)
	29 IBLA 37 (Feb. 16, 1977)
	30 IBLA 107 (May 2, 1977)
	31 IBLA 191 (July 5, 1977)
1001-1025	24 IBLA 44 (Feb. 23, 1976)
	24 IBLA 181 (Mar. 16, 1976)
	27 IBLA 296 (Oct. 26, 1976)
	29 IBLA 37 (Feb. 16, 1977)
	30 IBLA 107 (May 2, 1977)
	34 IBLA 270 (Mar. 31, 1978)
	41 IBLA 105 (June 11, 1979)
1002	24 IBLA 181 (Mar. 16, 1976)
	24 IBLA 221 (Mar. 24, 1976)
	29 IBLA 37 (Feb. 16, 1977)
	34 IBLA 239 (Mar. 28, 1978)
	34 IBLA 270 (Mar. 31, 1978)

TITLE 30 (Continued)

sec. 1002 (Continued)

35 IBLA 29 (May 5, 1978)
36 IBLA 59 (June 30, 1978)
36 IBLA 307 (Aug. 21, 1978)
41 IBLA 105 (June 11, 1979)
1002-1003 --------38 IBLA 373 (Dec. 29, 1978)
1003 ------------19 IBLA 167 (Mar. 17, 1975)
19 IBLA 185 (Mar. 18, 1975)
21 IBLA 133 (July 14, 1975)
21 IBLA 304 (Aug. 14, 1975)
24 IBLA 44 (Feb. 23, 1976)
24 IBLA 181 (Mar. 16, 1976)
24 IBLA 221 (Mar. 24, 1976)
26 IBLA 178 (Aug. 9, 1976)
26 IBLA 218 (Aug. 17, 1976)
27 IBLA 269 (Oct. 26, 1976)
27 IBLA 365 (Nov. 4, 1976)
27 IBLA 397 (Nov. 5, 1976)
29 IBLA 37 (Feb. 16, 1977)
30 IBLA 107 (May 2, 1977)
31 IBLA 191 (July 5, 1977)
1004 ------------33 IBLA 135 (Dec. 19, 1977)
35 IBLA 29 (May 5, 1978)
1004(c) ---------33 IBLA 135 (Dec. 19, 1977)
33 IBLA 371 (Jan. 23, 1978)
37 IBLA 306 (Oct. 23, 1978)
40 IBLA 68 (Mar. 16, 1979)
41 IBLA 367 (July 23, 1979)
43 IBLA 314 (Oct. 22, 1979)
1006 ------------19 IBLA 167 (Mar. 17, 1975)
26 IBLA 218 (Aug. 17, 1976)
27 IBLA 365 (Nov. 4, 1976)
1007 ------------34 IBLA 285; 85 I.D. 171 (1978)
1014 ------------27 IBLA 4 (Sept. 17, 1976)
1014(b) ---------32 IBLA 357 (Oct. 21, 1977)
33 IBLA 71 (Dec. 5, 1977)
36 IBLA 88 (July 12, 1978)
1014(c) ---------32 IBLA 357 (Oct. 21, 1977)
37 IBLA 222 (Oct. 12, 1978)
1020(b) ---------21 IBLA 352 (Aug. 25, 1975)
29 IBLA 210 (Mar. 22, 1977)
32 IBLA 275 (Sept. 27, 1977)
1023 ------------24 IBLA 221 (Mar. 24, 1976)
1024 ------------29 IBLA 210 (Mar. 22, 1977)
33 IBLA 160 (Dec. 20, 1977)
1201 ------------43 IBLA 104; 86 I.D. 472 (1979)
1201 *et seq.* ---- 1 IBSMA 186; 86 I.D. 321 (1979)
1 IBSMA 202; 86 I.D. 336 (1979)
1201-1328 ------- 1 IBSMA 239; 86 I.D. 446 (1979)
1 IBSMA 279; 86 I.D. 550 (1979)
1 IBSMA 305; 86 I.D. 675 (1979)
M-36909; 86 I.D. 28 (1979)
1232(a) ---------43 IBLA 104; 86 I.D. 472 (1979)
1251 ------------ 1 IBSMA 1 (June 15, 1978)
1252 ------------ 1 IBSMA 6 (June 30, 1978)
1252(a) --------- 1 IBSMA 259; 86 I.D. 486 (1979)
1 IBSMA 305; 86 I.D. 675 (1979)
1252(c) --------- 1 IBSMA 1 (June 15, 1978)
1265 ------------ 1 IBSMA 6 (June 30, 1978)
1265(c) --------- 1 IBSMA 259; 86 I.D. 486 (1979)
1267(b)(3) ------ 1 IBSMA 273; 86 I.D. 523 (1979)
1271 ------------ 1 IBSMA 285; 86 I.D. 623 (1979)
1 IBSMA 293; 86 I.D. 656 (1979)
1 IBSMA 305; 86 I.D. 675 (1979)
1271(a)(2) ------ 1 IBSMA 259; 86 I.D. 486 (1979)
1 IBSMA 305; 86 I.D. 675 (1979)
1271(a)(3) ------ 1 IBSMA 285; 86 I.D. 623 (1979)
1 IBSMA 293; 86 I.D. 656 (1979)
1 IBSMA 305; 86 I.D. 675 (1979)
1 IBSMA 316; 86 I.D. 724 (1979)
1271(a)(5) ------ 1 IBSMA 305; 86 I.D. 675 (1979)
1275 ------------ 1 IBSMA 293; 86 I.D. 656 (1979)
1275(a)(1) ------ 1 IBSMA 279; 86 I.D. 550 (1979)
1275(e) --------- 1 IBSMA 248; 86 I.D. 450 (1979)
1278(2) --------- 1 IBSMA 259; 86 I.D. 486 (1979)

TITLE 30 (Continued)

sec. 1278(3) --------- 1 IBSMA 158; 86 I.D. 266 (1979)
1291(17) -------- 1 IBSMA 293; 86 I.D. 656 (1979)
1291(28) -------- 1 IBSMA 158; 86 I.D. 266 (1979)
1 IBSMA 202; 86 I.D. 336 (1979)
1 IBSMA 259; 86 I.D. 486 (1979)
1 IBSMA 279; 86 I.D. 550 (1979)
1304 ------------38 IBLA 85 (Nov. 15, 1978)

TITLE 31:

sec. 203 ------------ IBCA-994-5-73; 82 I.D. 427 (1975)
IBCA-994-5-73 (Jan. 14, 1975)
IBCA-1176-12-77; 85 I.D. 279 (1978)
IBCA-1230-12-78; 86 I.D. 503 (1979)
451 *et seq.* ----38 IBLA 151 (Dec. 5, 1978)
463(b) ---------38 IBLA 151 (Dec. 5, 1978)
483a -----------20 IBLA 120 (Apr. 25, 1975)
20 IBLA 302 (May 30, 1975)
25 IBLA 341 (June 30, 1976)
26 IBLA 71 (July 9, 1976)
26 IBLA 232 (Aug. 17, 1976)
27 IBLA 269 (Oct. 26, 1976)
665 ------------ M-36903; 85 I.D. 337 (1978)
1601 *et seq.* ----40 IBLA 257 (Apr. 16, 1979)
1602 ------------40 IBLA 257 (Apr. 16, 1979)
1606 ------------40 IBLA 257 (Apr. 16, 1979)

TITLE 33:

sec. 403 ------------ M-36915; 86 I.D. 400 (1979)
701c ------------25 IBLA 316 (June 30, 1976)
701c-1 ----------25 IBLA 316 (June 30, 1976)
1157 ------------ M-36890; 84 I.D. 244 (1977)
1251 ------------24 IBLA 49 (Feb. 23, 1976)
26 IBLA 329 (Sept. 1, 1976)
M-36915; 86 I.D. 400 (1979)
1251 *et seq.* ---- M-36915; 86 I.D. 400 (1979)
1311(a) --------- M-36915; 86 I.D. 400 (1979)
1314(j) ---------24 IBLA 49 (Feb. 23, 1976)
26 IBLA 329 (Sept. 1, 1976)
1317 ------------ M-36915; 86 I.D. 400 (1979)
1323(2) --------- M-36915; 86 I.D. 400 (1979)
1344 ------------ M-36915; 86 I.D. 400 (1979)
1344(a) --------- M-36915; 86 I.D. 400 (1979)
1344(f)(1) ------ M-36915; 86 I.D. 400 (1979)
1344(f)(2) ------ M-36915; 86 I.D. 400 (1979)
1344(r) --------- M-36915; 86 I.D. 400 (1979)
1362(6) --------- M-36915; 86 I.D. 400 (1979)
1362(7) --------- M-36915; 86 I.D. 400 (1979)
1362(12) -------- M-36915; 86 I.D. 400 (1979)
1362(14) -------- M-36915; 86 I.D. 400 (1979)
1362(16) -------- M-36915; 86 I.D. 400 (1979)
1362(19) -------- M-36915; 86 I.D. 400 (1979)

TITLE 40:

sec. 270a ----------- IBCA-1123-8-76 (Nov. 22, 1978)
270b ----------- IBCA-1123-8-76 (Nov. 22, 1978)
327 *et seq.* ---- IBCA-1080-10-75; 83 I.D. 43 (1976)
471 *et seq.* ----22 IBLA 242 (Oct. 22, 1975)
38 IBLA 1 (Nov. 8, 1978)
472 ------------38 IBLA 347 (Dec. 22, 1978)
472(d) ---------22 IBLA 242 (Oct. 22, 1975)
484(e)(1) ------33 IBLA 392 (Jan. 26, 1978)
484(k)(2) ------33 IBLA 392 (Jan. 26, 1978)
490(h)(1) ------ 7 IBIA 83 (Aug. 8, 1978)

TITLE 41:

sec. 15 ------------ IBCA-994-5-73; 82 I.D. 427 (1975)
IBCA-994-5-73 (Jan. 14, 1975)

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TITLE 41 (Continued)

sec. 15 (Continued)
IBCA-1176-12-77; 85 I.D. 279 (1978)
IBCA-1230-12-78; 86 I.D. 503 (1979)
37 ------------ IBCA-1218-10-78; 86 I.D. 329 (1979)
256a ----------- IBCA-1178-2-78; 86 I.D. 206 (1979)
351 et seq. ---- IBCA-1218-10-78; 86 I.D. 329 (1979)
351-358 -------- IBCA-1236-12-78; 86 I.D. 469 (1979)
601 et seq. ---- IBCA-1232-12-78; 86 I.D. 197 (1979)
601-613 -------- IBCA-1088-11-75; 86 I.D. 527 (1979)
IBCA-1237-12-78, 1238-12-78, 1239-12-78, 1240-12-78; 86 I.D. 520 (1979)
IBCA-1237-12-78, 1238-12-78, 1239-12-78, 1240-12-78; 86 I.D. 654 (1979)
IBCA-1268-5-79; 86 I.D. 508 (1979)
602 ------------ IBCA-1232-12-78; 86 I.D. 197 (1979)
607(d) --------- IBCA-1088-11-75; 86 I.D. 527 (1979)

TITLE 42:

sec. 291-291a ------- 7 IBIA 212 (Sept. 12, 1979)
291-300 -------- 7 IBIA 212 (Sept. 12, 1979)
300p-302(c) ---- 7 IBIA 212 (Sept. 12, 1979)
1857------------- M-36890; 84 I.D. 244 (1977)
1983 ------------32 IBLA 106 (Sept. 12, 1977)
2000a et seq. ---19 IBLA 178 (Mar. 18, 1975)
2097 ------------30 IBLA 14 (Apr. 4, 1977)
3183 ------------ M-36885; 83 I.D. 589 (1976)
4321 ------------27 IBLA 46 (Sept. 23, 1976)
36 IBLA 88 (July 12, 1978)
M-36885; 83 I.D. 589 (1976)
4321 et seq. ----18 IBLA 359 (Jan. 30, 1975)
23 IBLA 343 (Jan. 21, 1976)
24 IBLA 49 (Feb. 23, 1976)
24 IBLA 221 (Mar. 24, 1976)
27 IBLA 278; 83 I.D. 518 (1976)
27 IBLA 340; 83 I.D. 542 (1976)
29 IBLA 57 (Feb. 16, 1977)
35 IBLA 172 (May 23, 1978)
37 IBLA 153 (Oct. 5, 1978)
38 IBLA 361 (Dec. 29, 1978)
40 IBLA 30 (Mar. 15, 1979)
40 IBLA 48 (Mar. 15, 1979)
40 IBLA 280 (Apr. 18, 1979)
M-36900; 86 I.D. 293 (1979)
M-36915; 86 I.D. 400 (1979)
1 OHA 292 (Mar. 15, 1976)
4331 ------------22 IBLA 177 (Sept. 30, 1975)
24 IBLA 76 (Feb. 24, 1976)
24 IBLA 147 (Mar. 10, 1976)
24 IBLA 181 (Mar. 16, 1976)
42 IBLA 164 (Aug. 17, 1979)
M-36885; 83 I.D. 589 (1976)
4331(b)(4) ------28 IBLA 214; 83 I.D. 666 (1976)
4332 ------------ 3 ANCAB 37 (July 3, 1978)
22 IBLA 177 (Sept. 30, 1975)
28 IBLA 214; 83 I.D. 666 (1976)
30 IBLA 388; 84 I.D. 282 (1977)
32 IBLA 361 (Oct. 25, 1977)
39 IBLA 205 (Feb. 2, 1979)
44 IBLA 51 (Nov. 19, 1979)
M-36885; 83 I.D. 589 (1976)
M-36917 (Dec. 6, 1979); 87 I.D. 27 (1980)

TITLE 42 (Continued)

sec. 4332(C) ---------24 IBLA 159 (Mar. 15, 1976)
4332(2)(C) ------ 2 ANCAB 247; 84 I.D. 1007 (1977)
3 ANCAB 37 (July 3, 1978)
23 IBLA 343 (Jan. 21, 1976)
29 IBLA 48 (Feb. 16, 1977)
4332(2)(C)(i) --- M-36917 (Dec. 6, 1979); 87 I.D. 27 (1980)
4332(2)(C)(v) ---30 IBLA 388; 84 I.D. 282 (1977)
4332(2)(G) ------30 IBLA 388; 84 I.D. 282 (1977)
4333 ------------22 IBLA 177 (Sept. 30, 1975)
4335 ------------ M-36885; 83 I.D. 589 (1976)
4601 ------------ 1 OHA 78 (Jan. 7, 1975)
1 OHA 115 (June 3, 1975)
1 OHA 170 (Sept. 18, 1975)
1 OHA 221 (Sept. 24, 1975)
1 OHA 226 (Oct. 14, 1975)
1 OHA 273 (Jan. 15, 1976)
2 OHA 203 (Aug. 30, 1978)
3 OHA 39 (Feb. 1, 1979)
4601 et seq. ---- 1 OHA 86 (Feb. 12, 1975)
1 OHA 170 (Sept. 18, 1975)
1 OHA 229 (Nov. 13, 1975)
1 OHA 292 (Mar. 15, 1976)
2 OHA 59 (Sept. 22, 1976)
2 OHA 92 (Oct. 4, 1976)
2 OHA 102 (Nov. 22, 1976)
2 OHA 109 (Apr. 21, 1977)
2 OHA 117 (May 3, 1977)
2 OHA 135 (June 22, 1977)
3 OHA 35 (Jan. 15, 1979)
4601(6) --------- 1 OHA 292 (Mar. 15, 1976)
2 OHA 147 (Aug. 9, 1977)
4601(7) --------- 1 OHA 170 (Sept. 18, 1975)
4601(7)(A) ------ 2 OHA 206 (Sept. 6, 1978)
3 OHA 69 (Apr. 20, 1979)
4601(7)(B) ------ 2 OHA 206 (Sept. 6, 1978)
3 OHA 69 (Apr. 20, 1979)
4601(8) --------- 1 OHA 229 (Nov. 13, 1975)
1 OHA 273 (Jan. 15, 1976)
4601-4655 ------- 3 OHA 97 (July 31, 1979)
3 OHA 124 (Aug. 17, 1979)
3 OHA 131 (Aug. 29, 1979)
3 OHA 124 (Aug. 17, 1979)
4602(a) --------- 1 OHA 157 (Aug. 8, 1975)
1 OHA 163 (Sept. 2, 1975)
2 OHA 169 (Mar. 30, 1978)
2 OHA 206 (Sept. 6, 1978)
3 OHA 1 (Nov. 6, 1978)
4603 ------------ 2 OHA 56 (Sept. 16, 1976)
2 OHA 147 (Aug. 9, 1977)
3 OHA 65 (Apr. 10, 1979)
4621 ------------ 1 OHA 229 (Nov. 13, 1975)
1 OHA 273 (Jan. 15, 1976)
1 OHA 292 (Mar. 15, 1976)
4622 ------------ 1 OHA 78 (Jan. 7, 1975)
1 OHA 86 (Feb. 12, 1975)
1 OHA 110 (Apr. 14, 1975)
1 OHA 130 (July 2, 1975)
1 OHA 157 (Aug. 8, 1975)
1 OHA 163 (Sept. 2, 1975)
1 OHA 256 (Dec. 3, 1975)
2 OHA 1 (Mar. 30, 1976)
2 OHA 18 (June 14, 1976)
2 OHA 24 (July 2, 1976)
2 OHA 35 (Sept. 9, 1976)
2 OHA 142 (Aug. 8, 1977)
2 OHA 181 (June 21, 1978)
2 OHA 183 (June 22, 1978)
2 OHA 203 (Aug. 30, 1978)
2 OHA 206 (Sept. 6, 1978)
3 OHA 39 (Feb. 1, 1979)
3 OHA 69 (Apr. 20, 1979)
3 OHA 77 (June 18, 1979)
3 OHA 104 (Aug. 9, 1979)
3 OHA 137 (Oct. 10, 1979)

TITLE 42 (Continued)

sec. 4622(a)	1 OHA 170 (Sept. 18, 1975)
	1 OHA 273 (Jan. 15, 1976)
	2 OHA 97 (Nov. 22, 1976)
	2 OHA 123 (June 13, 1977)
	2 OHA 156 (Oct. 17, 1977)
	2 OHA 206 (Sept. 6, 1978)
	3 OHA 47 (Mar. 16, 1979)
	3 OHA 69 (Apr. 20, 1979)
4622(b)	1 OHA 86 (Feb. 12, 1975)
	1 OHA 106 (Feb. 24, 1975)
	3 OHA 121 (Aug. 14, 1979)
4622(c)	1 OHA 170 (Sept. 18, 1975)
	1 OHA 229 (Nov. 13, 1975)
	1 OHA 273 (Jan. 15, 1976)
	2 OHA 113 (Apr. 29, 1977)
	2 OHA 206 (Sept. 6, 1978)
	3 OHA 69 (Apr. 20, 1979)
	3 OHA 73 (May 24, 1979)
4623	1 OHA 78 (Jan. 7, 1975)
	1 OHA 110 (Apr. 14, 1975)
	1 OHA 157 (Aug. 8, 1975)
	1 OHA 229 (Nov. 13, 1975)
	1 OHA 259 (Jan. 7, 1976)
	1 OHA 292 (Mar. 15, 1976)
	2 OHA 35 (Sept. 9, 1976)
	2 OHA 56 (Sept. 16, 1976)
	2 OHA 147 (Aug. 9, 1977)
	2 OHA 160 (Oct. 19, 1977)
	2 OHA 163 (Oct. 19, 1977)
	2 OHA 169 (Mar. 30, 1978)
	2 OHA 186 (Aug. 24, 1978)
	3 OHA 1 (Nov. 6, 1978)
	3 OHA 14 (Nov. 14, 1978)
	3 OHA 19 (Dec. 12, 1978)
	3 OHA 44 (Feb. 1, 1979)
	3 OHA 47 (Mar. 16, 1979)
	3 OHA 65 (Apr. 10, 1979)
	3 OHA 137 (Oct. 10, 1979)
	3 OHA 141 (Oct. 12, 1979)
	3 OHA 145 (Nov. 2, 1979)
	3 OHA 161 (Dec. 17, 1979)
4623(a)	1 OHA 280 (Feb. 11, 1976)
	2 OHA 138 (June 29, 1977)
4623(a)(1)(A)	1 OHA 137 (July 15, 1975)
	1 OHA 229 (Nov. 13, 1975)
	1 OHA 265 (Jan. 12, 1976)
	2 OHA 12 (June 3, 1976)
	2 OHA 28 (July 7, 1976)
4623(a)(1)(C)	1 OHA 86 (Feb. 12, 1975)
	1 OHA 106 (Feb. 24, 1975)
	1 OHA 170 (Sept. 18, 1975)
4624	1 OHA 86 (Feb. 12, 1975)
	1 OHA 229 (Nov. 13, 1975)
	1 OHA 292 (Mar. 15, 1976)
	2 OHA 35 (Sept. 9, 1976)
	2 OHA 147 (Aug. 9, 1977)
	2 OHA 153 (Sept. 20, 1977)
	2 OHA 156 (Oct. 17, 1977)
	3 OHA 39 (Feb. 1, 1979)
	3 OHA 63 (Apr. 9, 1979)
	3 OHA 161 (Dec. 17, 1979)
4624(1)	1 OHA 86 (Feb. 12, 1975)
	2 OHA 210 (Sept. 18, 1978)
4624(2)	1 OHA 86 (Feb. 12, 1975)
	1 OHA 106 (Feb. 24, 1975)
	2 OHA 97 (Nov. 22, 1976)
	2 OHA 169 (Mar. 30, 1978)
4625	1 OHA 86 (Feb. 12, 1975)
	1 OHA 292 (Mar. 15, 1976)
	2 OHA 147 (Aug. 9, 1977)
4625(c)(5)	1 OHA 229 (Nov. 13, 1975)
4626	2 OHA 147 (Aug. 9, 1977)
4626(b)	1 OHA 292 (Mar. 15, 1976)
4633	1 OHA 157 (Aug. 8, 1975)
	1 OHA 163 (Sept. 2, 1975)
	1 OHA 256 (Dec. 3, 1975)

TITLE 42 (Continued)

sec. 4633 (Continued)

	2 OHA 97 (Nov. 22, 1976)
	2 OHA 169 (Mar. 30, 1978)
	2 OHA 206 (Sept. 6, 1978)
	2 OHA 210 (Sept. 18, 1978)
	3 OHA 1 (Nov. 6, 1978)
4651	1 OHA 157 (Aug. 8, 1975)
	1 OHA 163 (Sept. 2, 1975)
	2 OHA 169 (Mar. 30, 1978)
	2 OHA 206 (Sept. 6, 1978)
	3 OHA 1 (Nov. 6, 1978)
4653	1 OHA 121 (June 5, 1975)
	2 OHA 8 (May 11, 1976)
	2 OHA 21 (June 14, 1976)
	2 OHA 135 (June 22, 1977)
	2 OHA 206 (Sept. 6, 1978)
	3 OHA 79 (June 27, 1979)
	3 OHA 82 (June 27, 1979)
	3 OHA 85 (July 5, 1979)
	3 OHA 89 (July 5, 1979)
	3 OHA 93 (July 13, 1979)
	3 OHA 104 (Aug. 9, 1979)
	3 OHA 127 (Aug. 23, 1979)
4653(1)	3 OHA 97 (July 31, 1979)
4653(2)	3 OHA 97 (July 31, 1979)
4653(3)	3 OHA 97 (July 31, 1979)
4654	1 OHA 229 (Nov. 13, 1975)
	2 OHA 8 (May 11, 1976)
6501 *et seq.*	M-36911; 86 I.D. 151 (1979)
7152	42 IBLA 307 (Aug. 29, 1979)
	44 IBLA 121 (Nov. 27, 1979)
7401 *et seq.*	M-36900; 86 I.D. 293 (1979)

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sec. 1	44 IBLA 275 (Dec. 26, 1979)
2	37 IBLA 7 (Sept. 6, 1978)
	40 IBLA 184 (Apr. 5, 1979)
	44 IBLA 275 (Dec. 26, 1979)
7	26 IBLA 194 (Aug. 11, 1976)
9	26 IBLA 194 (Aug. 11, 1976)
11	24 IBLA 58 (Feb. 23, 1976)
21	29 IBLA 307 (Mar. 30, 1977)
31	20 IBLA 149 (May 5, 1975)
	21 IBLA 199 (July 30, 1975)
	M-36914; 86 I.D. 553 (1979)
141	3 ANCAB 49; 85 I.D. 229 (1978)
	21 IBLA 116 (June 30, 1975)
	22 IBLA 121 (Sept. 26, 1975)
	23 IBLA 136 (Dec. 23, 1975)
	23 IBLA 166 (Dec. 24, 1975)
	24 IBLA 320 (Apr. 20, 1976)
	28 IBLA 368; 84 I.D. 87 (1977)
	29 IBLA 107 (Feb. 23, 1977)
	30 IBLA 112 (May 2, 1977)
	31 IBLA 43 (June 21, 1977)
	31 IBLA 357 (July 25, 1977)
	35 IBLA 349 (June 19, 1978)
	41 IBLA 85 (June 4, 1979)
	M-36911; 86 I.D. 151 (1979)
	M-36914; 86 I.D. 553 (1979)
141 *et seq.*	3 ANCAB 49; 85 I.D. 229 (1978)
	31 IBLA 357 (July 25, 1977)
141-142	35 IBLA 61 (May 10, 1978)
	38 IBLA 1 (Nov. 8, 1978)
	41 IBLA 85 (June 4, 1979)
142	23 IBLA 136 (Dec. 23, 1975)
	23 IBLA 166 (Dec. 24, 1975)
	28 IBLA 368; 84 I.D. 87 (1977)
	31 IBLA 139 (June 30, 1977)
	31 IBLA 357 (July 25, 1977)
	35 IBLA 349 (June 19, 1978)
	38 IBLA 385 (Dec. 29, 1978)
	42 IBLA 44 (July 31, 1979)
	43 IBLA 146 (Sept. 28, 1979)

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sec. 142 (Continued)

M-36911; 86 I.D. 151 (1979)
M-36914; 86 I.D. 553 (1979)
148 ------------ M-36886; 84 I.D. 1 (1977)
M-36908; 86 I.D. 3 (1979)
154 ------------27 IBLA 227 (Oct. 12, 1976)
34 IBLA 176 (Mar. 14, 1978)
34 IBLA 233 (Mar. 27, 1978)
40 IBLA 30 (Mar. 15, 1979)
42 IBLA 313 (Aug. 29, 1979)
158 ------------20 IBLA 296 (May 27, 1975)
161 ------------22 IBLA 8; 82 I.D. 432 (1975)
161 et seq. ----20 IBLA 23 (Apr. 16, 1975)
20 IBLA 129 (May 5, 1975)
23 IBLA 136 (Dec. 23, 1975)
24 IBLA 308 (Apr. 14, 1976)
26 IBLA 386 (Sept. 15, 1976)
29 IBLA 68 (Nov. 10, 1976)
30 IBLA 239 (May 31, 1977)
31 IBLA 162 (July 1, 1977)
36 IBLA 201 (Aug. 3, 1978)
162 ------------36 IBLA 201 (Aug. 3, 1978)
164 ------------19 IBLA 113 (Mar. 5, 1975)
20 IBLA 129 (May 5, 1975)
22 IBLA 191 (Oct. 15, 1975)
26 IBLA 137 (Aug. 2, 1976)
28 IBLA 68 (Nov. 10, 1976)
28 IBLA 314 (Jan. 14, 1977)
29 IBLA 150 (Mar. 4, 1977)
34 IBLA 123 (Mar. 2, 1978)
36 IBLA 201 (Aug. 3, 1978)
43 IBLA 186 (Oct. 5, 1979)
174 ------------27 IBLA 137; 83 I.D. 364 (1976)
175 ------------23 IBLA 179 (Jan. 5, 1976)
182 ------------19 IBLA 118 (Mar. 5, 1975)
31 IBLA 242 (July 18, 1977)
185 ------------23 IBLA 155 (Dec. 23, 1975)
27 IBLA 33 (Sept. 20, 1976)
30 IBLA 311 (June 6, 1977)
33 IBLA 277 (Jan. 5, 1978)
36 IBLA 201 (Aug. 3, 1978)
43 IBLA 178 (Sept. 28, 1979)
189 ------------27 IBLA 210 (Oct. 6, 1976)
190 ------------ 4 IBIA 147; 82 I.D. 521 (1975)
203 ------------35 IBLA 15 (May 4, 1978)
207 ------------40 IBLA 339 (May 10, 1979)
212 ------------19 IBLA 379; 82 I.D. 123 (1975)
24 IBLA 314 (Apr. 20, 1976)
213 ------------22 IBLA 8; 82 I.D. 432 (1975)
270 ------------18 IBLA 345 (Jan. 14, 1975)
20 IBLA 129 (May 5, 1975)
22 IBLA 8; 82 I.D. 432 (1975)
23 IBLA 59 (Dec. 11, 1975)
23 IBLA 179 (Jan. 5, 1976)
28 IBLA 68 (Nov. 10, 1976)
30 IBLA 157 (May 18, 1977)
34 IBLA 330; 85 I.D. 81 (1978)
43 IBLA 69 (Sept. 19, 1979)
270 et seq. ----26 IBLA 386 (Sept. 15, 1976)
270-1 ----------18 IBLA 418 (Feb. 10, 1975)
19 IBLA 68 (Feb. 25, 1975)
19 IBLA 283 (Apr. 7, 1975)
20 IBLA 169 (May 7, 1975)
20 IBLA 284 (May 27, 1975)
21 IBLA 54 (June 18, 1975)
21 IBLA 264 (Aug. 11, 1975)
21 IBLA 292 (Aug. 11, 1975)
22 IBLA 20 (Sept. 9, 1975)
22 IBLA 54 (Sept. 17, 1975)
22 IBLA 296 (Nov. 3, 1975)
23 IBLA 346 (Jan. 21, 1976)
29 IBLA 160 (Mar. 9, 1977)
40 IBLA 118 (Mar. 27, 1979)
41 IBLA 44 (May 29, 1979)
41 IBLA 224 (June 27, 1979)

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sec. 270-1 (Continued)

41 IBLA 280; 86 I.D. 345 (1979)
42 IBLA 59 (Aug. 2, 1979)
43 IBLA 245 (Oct. 10, 1979)
270-1 et seq. --22 IBLA 38 (Sept. 10, 1975)
22 IBLA 191 (Oct. 15, 1975)
23 IBLA 134 (Dec. 23, 1975)
23 IBLA 197 (Jan. 6, 1976)
23 IBLA 346 (Jan. 21, 1976)
29 IBLA 255 (Mar. 25, 1977)
270-1 - 270-3 --20 IBLA 162 (May 5, 1975)
20 IBLA 290 (May 27, 1975)
20 IBLA 387 (June 16, 1975)
21 IBLA 71 (June 25, 1975)
21 IBLA 116 (June 30, 1975)
21 IBLA 152 (July 16, 1975)
21 IBLA 157 (July 21, 1975)
21 IBLA 173 (July 25, 1975)
21 IBLA 181 (July 25, 1975)
21 IBLA 207 (July 30, 1975)
21 IBLA 223 (July 31, 1975)
21 IBLA 230 (Aug. 1, 1975)
21 IBLA 248 (Aug. 11, 1975)
21 IBLA 258 (Aug. 11, 1975)
21 IBLA 326 (Aug. 14, 1975)
21 IBLA 347 (Aug. 18, 1975)
22 IBLA 41 (Sept. 15, 1975)
22 IBLA 56 (Sept. 17, 1975)
22 IBLA 104 (Sept. 22, 1975)
22 IBLA 153 (Sept. 30, 1975)
22 IBLA 191 (Oct. 15, 1975)
22 IBLA 213 (Oct. 15, 1975)
22 IBLA 233 (Oct. 22, 1975)
22 IBLA 247 (Oct. 22, 1975)
22 IBLA 266 (Oct. 30, 1975)
22 IBLA 287 (Oct. 30, 1975)
22 IBLA 388 (Nov. 24, 1975)
22 IBLA 392 (Nov. 24, 1975)
23 IBLA 17 (Nov. 26, 1975)
23 IBLA 36 (Dec. 2, 1975)
23 IBLA 54 (Dec. 4, 1975)
23 IBLA 77 (Dec. 12, 1975)
23 IBLA 79 (Dec. 12, 1975)
23 IBLA 81 (Dec. 12, 1975)
23 IBLA 86 (Dec. 16, 1975)
23 IBLA 88 (Dec. 16, 1975)
23 IBLA 91 (Dec. 18, 1975)
23 IBLA 95 (Dec. 18, 1975)
23 IBLA 99 (Dec. 18, 1975)
23 IBLA 120 (Dec. 23, 1975)
23 IBLA 128 (Dec. 23, 1975)
23 IBLA 131 (Dec. 23, 1975)
23 IBLA 145 (Dec. 23, 1975)
23 IBLA 151 (Dec. 23, 1975)
23 IBLA 159 (Dec. 23, 1975)
23 IBLA 170 (Dec. 29, 1975)
23 IBLA 182 (Jan. 5, 1976)
23 IBLA 188 (Jan. 5, 1976)
23 IBLA 192 (Jan. 6, 1976)
23 IBLA 197 (Jan. 6, 1976)
23 IBLA 205 (Jan. 6, 1976)
23 IBLA 207 (Jan. 6, 1976)
23 IBLA 221 (Jan. 8, 1976)
23 IBLA 276 (Jan. 12, 1976)
23 IBLA 280 (Jan. 12, 1976)
23 IBLA 284 (Jan. 12, 1976)
23 IBLA 288 (Jan. 12, 1976)
23 IBLA 292 (Jan. 12, 1976)
23 IBLA 296 (Jan. 12, 1976)
23 IBLA 299 (Jan. 14, 1976)
23 IBLA 304 (Jan. 16, 1976)
23 IBLA 309 (Jan. 16, 1976)
26 IBLA 1 (July 6, 1976)
26 IBLA 235; 83 I.D. 309 (1976)
28 IBLA 83 (Nov. 12, 1976)

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28 IBLA 153; 83 I.D. 564 (1976)
29 IBLA 250 (Mar. 25, 1977)
29 IBLA 255 (Mar. 25, 1977)
30 IBLA 157 (May 18, 1977)
40 IBLA 321; 86 I.D. 279 (1979)
41 IBLA 44 (May 29, 1979)
41 IBLA 70 (May 31, 1979)
41 IBLA 169 (June 22, 1979)
41 IBLA 231 (June 27, 1979)
41 IBLA 280; 86 I.D. 345 (1979)
41 IBLA 296 (June 29, 1979)
41 IBLA 309 (July 5, 1979)
41 IBLA 315; 86 I.D. 361 (1979)
41 IBLA 338 (July 11, 1979)
41 IBLA 387 (July 24, 1979)
42 IBLA 1 (July 25, 1979)
42 IBLA 51 (July 31, 1979)
42 IBLA 59 (Aug. 2, 1979)
42 IBLA 155 (Aug. 19, 1979)
42 IBLA 231 (Aug. 22, 1979)
42 IBLA 276 (Aug. 27, 1979)
42 IBLA 370; 86 I.D. 441 (1979)
43 IBLA 69 (Sept. 19, 1979)
43 IBLA 74 (Sept. 19, 1979)
43 IBLA 174 (Sept. 28, 1979)
43 IBLA 186 (Oct. 5, 1979)
43 IBLA 266 (Oct. 15, 1979)
43 IBLA 284 (Oct. 17, 1979)
43 IBLA 288 (Oct. 17, 1979)
43 IBLA 296 (Oct. 17, 1979)
44 IBLA 99 (Nov. 20, 1979)
44 IBLA 313 (Dec. 31, 1979)

270-1 - 270-17 -22 IBLA 291 (Nov. 3, 1975)

270-2 ----------18 IBLA 418 (Feb. 10, 1975)
19 IBLA 68 (Feb. 25, 1975)
21 IBLA 292 (Aug. 11, 1975)
22 IBLA 20 (Sept. 9, 1975)
22 IBLA 54 (Sept. 17, 1975)
23 IBLA 188 (Jan. 5, 1976)
41 IBLA 224 (June 27, 1979)
41 IBLA 280; 86 I.D. 345 (1979)

270-3 ----------18 IBLA 418 (Feb. 10, 1975)
19 IBLA 68 (Feb. 25, 1975)
20 IBLA 169 (May 7, 1975)
21 IBLA 264 (Aug. 11, 1975)
21 IBLA 292 (Aug. 11, 1975)
22 IBLA 54 (Sept. 17, 1975)
26 IBLA 235; 83 I.D. 309 (1976)
40 IBLA 321; 86 I.D. 279 (1979)
41 IBLA 44 (May 29, 1979)
41 IBLA 224 (June 27, 1979)
41 IBLA 280; 86 I.D. 345 (1979)
41 IBLA 309 (July 5, 1979)
42 IBLA 59 (Aug. 2, 1979)
42 IBLA 260 (Aug. 27, 1979)
43 IBLA 186 (Oct. 5, 1979)

270-5 ----------18 IBLA 345 (Jan. 14, 1975)
22 IBLA 291 (Nov. 3, 1975)

270-6 ----------18 IBLA 345 (Jan. 14, 1975)
34 IBLA 330; 85 I.D. 81 (1978)

270-11 ---------20 IBLA 284 (May 27, 1975)

274 ------------20 IBLA 319 (June 4, 1975)
21 IBLA 124 (July 14, 1975)
21 IBLA 330 (Aug. 18, 1975)
25 IBLA 234 (June 21, 1976)

279 ------------19 IBLA 118 (Mar. 5, 1975)
20 IBLA 129 (May 5, 1975)
28 IBLA 314 (Jan. 14, 1977)
37 IBLA 33 (Sept. 18, 1978)

279-284 --------20 IBLA 23 (Apr. 16, 1975)
37 IBLA 33 (Sept. 18, 1978)

282 ----------- Sec. Order No. 3016; 85 I.D. 1 (1978)

TITLE 43 (Continued)

sec. 291 ------------28 IBLA 214; 83 I.D. 666 (1976)
M-36893 (Supp.); 86 I.D. 627 (1979)

291 *et seq.* ----24 IBLA 308 (Apr. 14, 1976)
29 IBLA 210 (Mar. 22, 1977)
31 IBLA 162 (July 1, 1977)
33 IBLA 36 (Nov. 25, 1977)
35 IBLA 146; 85 I.D. 129 (1978)
36 IBLA 4 (June 27, 1978)
M-36914; 86 I.D. 553 (1979)

291-298 --------35 IBLA 146; 85 I.D. 129 (1978)

291-300 --------40 IBLA 12 (Mar. 9, 1979)
41 IBLA 197 (June 22, 1979)
42 IBLA 11 (July 25, 1979)

291-301 --------27 IBLA 256 (Oct. 20, 1976)
35 IBLA 146; 85 I.D. 129 (1978)
41 IBLA 248 (June 27, 1979)
42 IBLA 11 (July 25, 1979)

291-302 --------21 IBLA 352 (Aug. 25, 1975)

292 ------------24 IBLA 141 (Mar. 8, 1976)
31 IBLA 162 (July 1, 1977)
35 IBLA 146; 85 I.D. 129 (1978)
M-36893 (Supp.); 86 I.D. 627 (1979)

293 ------------33 IBLA 36 (Nov. 25, 1977)

299 ------------35 IBLA 146; 85 I.D. 129 (1978)
42 IBLA 11 (July 25, 1979)
M-36909; 86 I.D. 28 (1979)

300 ------------23 IBLA 358; 83 I.D. 23 (1976)
25 IBLA 287; 83 I.D. 249 (1976)
28 IBLA 368; 84 I.D. 87 (1977)
33 IBLA 386 (Jan. 26, 1978)
M-36914; 86 I.D. 553 (1979)

315 ------------18 IBLA 432 (Feb. 14, 1975)
24 IBLA 324; 83 I.D. 185 (1976)
26 IBLA 254 (Aug. 18, 1976)
38 IBLA 353 (Dec. 22, 1978)
39 IBLA 272; 86 I.D. 133 (1979)
M-36914; 86 I.D. 553 (1979)

315 *et seq.* ----24 IBLA 49 (Feb. 23, 1976)
24 IBLA 308 (Apr. 14, 1976)
27 IBLA 278; 83 I.D. 518 (1976)
29 IBLA 262 (Mar. 25, 1977)
30 IBLA 14 (Apr. 4, 1977)
30 IBLA 277 (June 1, 1977)
32 IBLA 123 (Sept. 12, 1977)
32 IBLA 174; 84 I.D. 475 (1977)
32 IBLA 395 (Nov. 9, 1977)
33 IBLA 386 (Jan. 26, 1978)
35 IBLA 146; 85 I.D. 129 (1978)
35 IBLA 306 (June 2, 1978)
36 IBLA 98 (July 13, 1978)
37 IBLA 357 (Oct. 31, 1978)
38 IBLA 262 (Dec. 8, 1978)
39 IBLA 176 (Jan. 30, 1979)
40 IBLA 12 (Mar. 9, 1979)
41 IBLA 110 (June 11, 1979)

315-315g -------30 IBLA 277 (June 1, 1977)

315-315r -------35 IBLA 306 (June 2, 1978)

315a -----------24 IBLA 324; 83 I.D. 185 (1976)
27 IBLA 340; 83 I.D. 542 (1976)
32 IBLA 123 (Sept. 12, 1977)
42 IBLA 48 (July 31, 1979)
M-36914; 86 I.D. 553 (1979)

315a *et seq.* --- M-36914; 86 I.D. 553 (1979)

315a-315r ------42 IBLA 48 (July 31, 1979)

315b -----------19 IBLA 97 (Mar. 4, 1975)
19 IBLA 219 (Mar. 25, 1975)
19 IBLA 274 (Apr. 7, 1975)
24 IBLA 324; 83 I.D. 185 (1976)
27 IBLA 340; 83 I.D. 542 (1976)
33 IBLA 7 (Nov. 15, 1977)
33 IBLA 225 (Dec. 28, 1977)
40 IBLA 280 (Apr. 18, 1979)
M-36910; 86 I.D. 89 (1979)
M-36914; 86 I.D. 553 (1979)

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TITLE 43 (Continued)

sec. 315c	43 IBLA 41; 86 I.D. 458 (1979)
	M-36914; 86 I.D. 553 (1979)
315f	18 IBLA 423 (Feb. 13, 1975)
	21 IBLA 210 (July 31, 1975)
	22 IBLA 177 (Sept. 30, 1975)
	22 IBLA 205 (Oct. 15, 1975)
	24 IBLA 308 (Apr. 14, 1976)
	26 IBLA 110 (July 26, 1976)
	31 IBLA 162 (July 1, 1977)
	36 IBLA 119 (July 25, 1978)
	38 IBLA 353 (Dec. 22, 1978)
	42 IBLA 313 (Aug. 29, 1979)
315g	21 IBLA 352 (Aug. 25, 1975)
	26 IBLA 194 (Aug. 11, 1976)
	26 IBLA 313 (Aug. 30, 1976)
	27 IBLA 340; 83 I.D. 542 (1976)
	28 IBLA 118 (Nov. 15, 1976)
	32 IBLA 1 (Aug. 24, 1977)
	32 IBLA 275 (Sept. 27, 1977)
	33 IBLA 358 (Jan. 18, 1978)
	35 IBLA 146; 85 I.D. 129 (1978)
	36 IBLA 119 (July 25, 1978)
	36 IBLA 329 (Aug. 28, 1978)
	42 IBLA 345 (Aug. 31, 1979)
315g(b)	24 IBLA 58 (Feb. 23, 1976)
	27 IBLA 340; 83 I.D. 542 (1976)
	38 IBLA 160 (Dec. 5, 1978)
315g(d)	32 IBLA 1 (Aug. 24, 1977)
	35 IBLA 146; 85 I.D. 129 (1978)
	38 IBLA 160 (Dec. 5, 1978)
315h	30 IBLA 243 (May 31, 1977)
315h-315m	30 IBLA 277 (June 1, 1977)
315l	M-36914; 86 I.D. 553 (1979)
315m	18 IBLA 432 (Feb. 14, 1975)
	19 IBLA 6 (Feb. 20, 1975)
	19 IBLA 71 (Feb. 26, 1975)
	19 IBLA 97 (Mar. 4, 1975)
	19 IBLA 154; 82 I.D. 93 (1975)
	19 IBLA 219 (Mar. 25, 1975)
	20 IBLA 111 (Apr. 25, 1975)
	20 IBLA 115 (Apr. 25, 1975)
	22 IBLA 31 (Sept. 10, 1975)
	23 IBLA 374 (Feb. 4, 1976)
	24 IBLA 1 (Feb. 4, 1976)
	24 IBLA 58 (Feb. 23, 1976)
	24 IBLA 124 (Mar. 2, 1976)
	24 IBLA 155 (Mar. 15, 1976)
	24 IBLA 265 (Mar. 29, 1976)
	25 IBLA 277 (June 25, 1976)
	25 IBLA 331; 83 I.D. 269 (1976)
	28 IBLA 93 (Nov. 15, 1976)
	30 IBLA 1 (Apr. 1, 1977)
	30 IBLA 277 (June 1, 1977)
	32 IBLA 123 (Sept. 12, 1977)
	32 IBLA 311; 84 I.D. 874 (1977)
	32 IBLA 395 (Nov. 9, 1977)
	33 IBLA 262 (Jan. 5, 1978)
	35 IBLA 75 (May 12, 1978)
	36 IBLA 282 (Aug. 21, 1978)
	37 IBLA 153 (Oct. 5, 1978)
	38 IBLA 327 (Dec. 19, 1978)
	39 IBLA 176 (Jan. 30, 1979)
	40 IBLA 129 (Mar. 28, 1979)
	42 IBLA 26 (July 26, 1979)
	42 IBLA 355 (Sept. 11, 1979)
	43 IBLA 41; 86 I.D. 458 (1979)
315m-2	43 IBLA 41; 86 I.D. 458 (1979)
315n	30 IBLA 277 (June 1, 1977)
315o	30 IBLA 277 (June 1, 1977)
315o-1	30 IBLA 277 (June 1, 1977)
316	20 IBLA 162 (May 5, 1975)
	23 IBLA 54 (Dec. 4, 1975)
	41 IBLA 214 (June 27, 1979)
	41 IBLA 219 (June 27, 1979)
	41 IBLA 296 (June 29, 1979)
	41 IBLA 280; 86 I.D. 345 (1979)
	41 IBLA 338 (July 11, 1979)

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sec. 316 *et seq.*	20 IBLA 290 (May 27, 1975)
	23 IBLA 134 (Dec. 23, 1975)
	23 IBLA 197 (Jan. 6, 1976)
	23 IBLA 346 (Jan. 21, 1976)
	29 IBLA 255 (Mar. 25, 1977)
	41 IBLA 296 (June 29, 1979)
	41 IBLA 338 (July 11, 1979)
316-316o	23 IBLA 54 (Dec. 4, 1975)
	23 IBLA 197 (Jan. 6, 1976)
	29 IBLA 255 (Mar. 25, 1977)
316a-316o	23 IBLA 54 (Dec. 4, 1975)
	41 IBLA 214 (June 27, 1979)
	41 IBLA 219 (June 27, 1979)
	41 IBLA 280; 86 I.D. 345 (1979)
	41 IBLA 296 (June 29, 1979)
	41 IBLA 338 (July 11, 1979)
316b	21 IBLA 152 (July 16, 1975)
321	19 IBLA 350; 82 I.D. 146 (1975)
	25 IBLA 287; 83 I.D. 249 (1976)
	32 IBLA 372 (Oct. 31, 1977)
	43 IBLA 130 (Sept. 26, 1979)
	M-36914; 86 I.D. 553 (1979)
321 *et seq.*	20 IBLA 23 (Apr. 16, 1975)
	21 IBLA 210 (July 31, 1975)
	21 IBLA 266; 82 I.D. 375 (1975)
	23 IBLA 136 (Dec. 23, 1975)
	26 IBLA 41; 83 I.D. 280 (1976)
	33 IBLA 221 (Dec. 22, 1977)
	39 IBLA 141 (Jan. 29, 1979)
	M-36914; 86 I.D. 553 (1979)
321-329	19 IBLA 350; 82 I.D. 146 (1975)
	19 IBLA 379; 82 I.D. 123 (1975)
322	42 IBLA 66 (Aug. 8, 1979)
323	M-36914; 86 I.D. 553 (1979)
324	19 IBLA 350; 82 I.D. 146 (1975)
	19 IBLA 379; 82 I.D. 123 (1975)
	21 IBLA 266; 82 I.D. 377 (1975)
325	21 IBLA 266; 82 I.D. 377 (1975)
	32 IBLA 372 (Oct. 31, 1977)
327	19 IBLA 208 (Mar. 21, 1975)
328	19 IBLA 350; 82 I.D. 146 (1975)
	19 IBLA 379; 82 I.D. 123 (1975)
329	19 IBLA 350; 82 I.D. 146 (1975)
	19 IBLA 379; 82 I.D. 123 (1975)
	21 IBLA 266; 82 I.D. 377 (1975)
	26 IBLA 41; 83 I.D. 280 (1976)
	26 IBLA 366 (Sept. 8, 1976)
	30 IBLA 311 (June 6, 1977)
	32 IBLA 286 (Sept. 27, 1977)
	33 IBLA 277 (Jan. 5, 1978)
	34 IBLA 86 (Feb. 22, 1978)
	43 IBLA 178 (Sept. 28, 1979)
333	26 IBLA 366 (Sept. 8, 1976)
	32 IBLA 286 (Sept. 27, 1977)
334	26 IBLA 366 (Sept. 8, 1976)
	32 IBLA 286 (Sept. 27, 1977)
	34 IBLA 86 (Feb. 22, 1978)
336	34 IBLA 86 (Feb. 22, 1978)
	43 IBLA 271 (Oct. 15, 1979)
371 *et seq.*	M-36886; 84 I.D. 1 (1977)
	M-36908; 86 I.D. 3 (1979)
371(a)	3 ANCAB 11; 85 I.D. 219 (1978)
372 *et seq.*	M-36914; 86 I.D. 553 (1979)
373	M-36913; 86 I.D. 306 (1979)
383	M-36914; 86 I.D. 553 (1979)
390a	M-36901; 85 I.D. 297 (1978)
411 *et seq.*	20 IBLA 330 (June 6, 1975)
412	M-36901; 85 I.D. 297 (1978)
	M-36902; 85 I.D. 326 (1978)
	M-36903; 85 I.D. 337 (1978)
416	18 IBLA 385 (Jan. 31, 1975)
	18 IBLA 428 (Feb. 14, 1975)
	24 IBLA 108 (Mar. 1, 1976)
	24 IBLA 237 (Mar. 24, 1976)
	36 IBLA 119 (July 25, 1978)
	39 IBLA 81 (Jan. 24, 1979)
	M-36886; 84 I.D. 1 (1977)

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sec. 419 ------------36 IBLA 119 (July 25, 1978)
422a ----------- M-36904; 85 I.D. 254 (1978)
422a *et seq.* --- M-36904; 85 I.D. 254 (1978)
422a-422l ------ M-36904; 85 I.D. 254 (1978)
422b(b) -------- M-36904; 85 I.D. 254 (1978)
422b(c) -------- M-36904; 85 I.D. 254 (1978)
422d(a) -------- M-36904; 85 I.D. 254 (1978)
422e(b) -------- M-36904; 85 I.D. 254 (1978)
422e(c) -------- M-36904; 85 I.D. 254 (1978)
422f ----------- M-36904; 85 I.D. 254 (1978)
422g ----------- M-36904; 85 I.D. 254 (1978)
422h ----------- M-36904; 85 I.D. 254 (1978)
422k ----------- M-36904; 85 I.D. 254 (1978)
423 ------------ M-36913; 86 I.D. 306 (1979)
423e ----------- M-36904; 85 I.D. 254 (1978)
M-36913; 86 I.D. 306 (1979)
431 ------------ M-36904; 85 I.D. 254 (1978)
M-36913; 86 I.D. 306 (1979)
431-445 -------- M-36893 (Supp.); 86 I.D. 627 (1979)
436 ------------18 IBLA 428 (Feb. 14, 1975)
24 IBLA 237 (Mar. 24, 1976)
36 IBLA 119 (July 25, 1978)
443 ------------19 IBLA 350; 82 I.D. 146 (1975)
455 ------------42 IBLA 117 (Aug. 16, 1979)
455a -----------42 IBLA 117 (Aug. 16, 1979)
468 ------------ M-36904; 85 I.D. 254 (1978)
469 *et seq.* ----40 IBLA 30 (Mar. 15, 1979)
471 ------------41 IBLA 214 (June 27, 1979)
41 IBLA 219 (June 27, 1979)
471 *et seq.* ---- M-36913; 86 I.D. 306 (1979)
471a-471o ------41 IBLA 214 (June 27, 1979)
41 IBLA 219 (June 27, 1979)
476 ------------29 IBLA 220 (Mar. 23, 1977)
478 ------------27 IBLA 278; 83 I.D. 518 (1976)
485a(c) -------- M-36901; 85 I.D. 297 (1978)
485h ----------- M-36901; 85 I.D. 297 (1978)
M-36903; 85 I.D. 337 (1978)
485h(a) -------- M-35902; 85 I.D. 326 (1978)
485h(c) --------35 IBLA 279; 85 I.D. 186 (1978)
485h(d) -------- M-36901; 85 I.D. 297 (1978)
485h(e) -------- M-36901; 85 I.D. 297 (1978)
511 ------------ M-36901; 85 I.D. 297 (1978)
M-36913; 86 I.D. 306 (1979)
521 ------------ M-36904; 85 I.D. 254 (1978)
544 ------------19 IBLA 350; 82 I.D. 146 (1975)
M-36913; 86 I.D. 306 (1979)
615ii-615oo ---- M-36901; 85 I.D. 297 (1978)
M-36903; 85 I.D. 337 (1978)
616 ------------ M-36901; 85 I.D. 297 (1978)
M-36903; 85 I.D. 337 (1978)
616-616f ------- M-36902; 85 I.D. 326 (1978)
616k ----------- M-36903; 85 I.D. 337 (1978)
616k-616s ------ M-36903; 85 I.D. 337 (1978)
616p ----------- M-36903; 85 I.D. 337 (1978)
616nn ---------- M-36901; 85 I.D. 297 (1978)
616bbb --------- M-36903; 85 I.D. 337 (1978)
616fff-1 ------- M-36901; 85 I.D. 297 (1978)
M-36903; 85 I.D. 337 (1978)
616fff-4 ------- M-36903; 85 I.D. 337 (1978)
616fff-7 ------- M-36903; 85 I.D. 337 (1978)
617 *et seq.* ---- M-36904; 85 I.D. 254 (1978)
617m ----------- M-36904; 85 I.D. 254 (1978)
620 ------------ M-36901; 85 I.D. 297 (1978)
M-36903; 85 I.D. 337 (1978)
641 ------------24 IBLA 314 (Apr. 20, 1976)
25 IBLA 27 (May 5, 1976)
26 IBLA 194 (Aug. 11, 1976)
32 IBLA 89 (Sept. 2, 1977)
641 *et seq.* ----21 IBLA 210 (July 31, 1975)
24 IBLA 314 (Apr. 20, 1976)
24 IBLA 387 (May 3, 1976)
25 IBLA 27 (May 5, 1976)
27 IBLA 303 (Oct. 26, 1976)
32 IBLA 89 (Sept. 2, 1977)
32 IBLA 372 (Oct. 31, 1977)
35 IBLA 236 (May 26, 1978)

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sec. 643 ------------21 IBLA 210 (July 31, 1975)
24 IBLA 314 (Apr. 20, 1976)
24 IBLA 387 (May 3, 1976)
25 IBLA 27 (May 5, 1976)
27 IBLA 303 (Oct. 26, 1976)
32 IBLA 89 (Sept. 2, 1977)
644 ------------26 IBLA 194 (Aug. 11, 1976)
661 ------------ M-36914; 86 I.D. 553 (1979)
666 ------------28 IBLA 368; 84 I.D. 87 (1977)
M-36914; 86 I.D. 553 (1979)
666(a) ---------28 IBLA 368; 84 I.D. 87 (1977)
666(b) ---------28 IBLA 368; 84 I.D. 87 (1977)
682 ------------ 2 ANCAB 1; 84 I.D. 349 (1977)
Sec. Order No. 3016; 85 I.D. 1 (1978)
682a -----------18 IBLA 385 (Jan. 31, 1975)
19 IBLA 78 (Feb. 27, 1975)
20 IBLA 156 (May 5, 1975)
26 IBLA 270 (Aug. 24, 1976)
31 IBLA 13 (June 17, 1977)
682a *et seq.* ---24 IBLA 190 (Mar. 18, 1976)
24 IBLA 195 (Mar. 19, 1976)
26 IBLA 270 (Aug. 24, 1976)
38 IBLA 175 (Dec. 6, 1978)
38 IBLA 297 (Dec. 14, 1978)
682a-682c ------28 IBLA 111 (Nov. 15, 1976)
682a-682e ------19 IBLA 312 (Apr. 7, 1975)
20 IBLA 253 (May 16, 1975)
38 IBLA 297 (Dec. 14, 1978)
682b -----------31 IBLA 13 (June 17, 1977)
687a -----------18 IBLA 286 (Jan. 2, 1975)
19 IBLA 90 (Mar. 30, 1975)
19 IBLA 149 (Mar. 13, 1975)
19 IBLA 251 (Mar. 31, 1975)
19 IBLA 283 (Apr. 7, 1975)
20 IBLA 284 (May 27, 1975)
21 IBLA 81 (June 27, 1975)
21 IBLA 251 (Aug. 11, 1975)
22 IBLA 150 (Sept. 30, 1975)
22 IBLA 160 (Sept. 30, 1975)
22 IBLA 216 (Oct. 15, 1975)
22 IBLA 255 (Oct. 23, 1975)
22 IBLA 258 (Oct. 24, 1975)
22 IBLA 291 (Nov. 3, 1975)
22 IBLA 328 (Nov. 14, 1975)
22 IBLA 374 (Nov. 17, 1975)
23 IBLA 59 (Dec. 11, 1975)
23 IBLA 190 (Jan. 6, 1976)
24 IBLA 23 (Feb. 11, 1976)
24 IBLA 100 (Mar. 1, 1976)
24 IBLA 240 (Mar. 25, 1976)
25 IBLA 44 (May 13, 1976)
25 IBLA 96 (June 3, 1976)
26 IBLA 123 (July 30, 1976)
27 IBLA 27 (Sept. 17, 1976)
28 IBLA 345 (Jan. 24, 1977)
29 IBLA 177 (Mar. 18, 1977)
29 IBLA 348 (Mar. 31, 1977)
30 IBLA 157 (May 18, 1977)
30 IBLA 359 (June 10, 1977)
31 IBLA 203 (July 6, 1977)
31 IBLA 363 (July 28, 1977)
32 IBLA 235 (Sept. 21, 1977)
33 IBLA 395 (Jan. 30, 1978)
35 IBLA 95 (May 15, 1978)
37 IBLA 48 (Sept. 18, 1978)
37 IBLA 352 (Oct. 30, 1978)
38 IBLA 305 (Dec. 14, 1978)
39 IBLA 36 (Jan. 15, 1979)
39 IBLA 321 (Feb. 27, 1979)
40 IBLA 63 (Mar. 16, 1979)
40 IBLA 106 (Mar. 27, 1979)
42 IBLA 231 (Aug. 22, 1979)
42 IBLA 136 (Aug. 16, 1979)
43 IBLA 333 (Oct. 29, 1979)
687a *et seq.* ---20 IBLA 174 (May 7, 1975)
20 IBLA 221 (May 9, 1975)

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23 IBLA 59 (Dec. 11, 1975)
25 IBLA 44 (May 13, 1976)
29 IBLA 348 (Mar. 31, 1977)
687a-687a-6 ----22 IBLA 160 (Sept. 30, 1975)
687a-1 ---------19 IBLA 149 (Mar. 13, 1975)
19 IBLA 283 (Apr. 7, 1975)
20 IBLA 129 (May 5, 1975)
20 IBLA 174 (May 7, 1975)
20 IBLA 221 (May 9, 1975)
20 IBLA 243 (May 16, 1975)
21 IBLA 81 (June 27, 1975)
21 IBLA 251 (Aug. 11, 1975)
22 IBLA 160 (Sept. 30, 1975)
22 IBLA 255 (Oct. 23, 1975)
22 IBLA 291 (Nov. 3, 1975)
22 IBLA 374 (Nov. 17, 1975)
24 IBLA 100 (Mar. 1, 1976)
24 IBLA 240 (Mar. 25, 1976)
25 IBLA 96 (June 3, 1976)
28 IBLA 68 (Nov. 10, 1976)
28 IBLA 345 (Jan. 24, 1977)
29 IBLA 177 (Mar. 18, 1977)
30 IBLA 359 (June 10, 1977)
31 IBLA 363 (July 28, 1977)
33 IBLA 395 (Jan. 30, 1978)
37 IBLA 48 (Sept. 18, 1978)
38 IBLA 305 (Dec. 14, 1978)
39 IBLA 36 (Jan. 15, 1979)
40 IBLA 63 (Mar. 16, 1979)
40 IBLA 106 (Mar. 27, 1979)
42 IBLA 136 (Aug. 16, 1979)
42 IBLA 231 (Aug. 22, 1979)
43 IBLA 333 (Oct. 29, 1979)
M-36889; 84 I.D. 188 (1977)
687a-2 ---------27 IBLA 27 (Sept. 17, 1976)
697 ------------35 IBLA 79 (May 12, 1978)
703(a) ---------34 IBLA 219 (Mar. 27, 1978)
718 ------------24 IBLA 85; 83 I.D. 47 (1976)
40 IBLA 63 (Mar. 16, 1979)
718 et seq. ----24 IBLA 85; 83 I.D. 47 (1976)
718-720 --------30 IBLA 74 (Apr. 18, 1977)
40 IBLA 63 (Mar. 16, 1979)
40 IBLA 317 (Apr. 30, 1979)
722 ------------35 IBLA 79 (May 12, 1978)
732 ------------24 IBLA 85; 83 I.D. 47 (1976)
26 IBLA 97 (July 19, 1976)
40 IBLA 63 (Mar. 16, 1979)
732-736 --------43 IBLA 306 (Oct. 17, 1979)
732-737 --------40 IBLA 63 (Mar. 16, 1979)
733 ------------35 IBLA 370 (June 23, 1978)
39 IBLA 229 (Feb. 12, 1979)
43 IBLA 156 (Sept. 28, 1979)
733 et seq. ----26 IBLA 144 (Aug. 2, 1976)
733-736 --------24 IBLA 85; 83 I.D. 47 (1976)
26 IBLA 97 (July 19, 1976)
737 ------------26 IBLA 144 (Aug. 2, 1976)
43 IBLA 156 (Sept. 28, 1979)
752 ------------31 IBLA 342 (July 22, 1977)
40 IBLA 184 (Apr. 5, 1979)
757 ------------27 IBLA 137; 83 I.D. 364 (1976)
772 ------------30 IBLA 92 (Apr. 29, 1977)
30 IBLA 95 (Apr. 29, 1977)
31 IBLA 342 (July 22, 1977)
37 IBLA 132 (Oct. 4, 1978)
40 IBLA 184 (Apr. 5, 1979)
851 ------------ 3 ANCAB 11; 85 I.D. 219 (1978)
24 IBLA 135 (Mar. 8, 1976)
27 IBLA 137; 83 I.D. 364 (1976)
28 IBLA 100; 83 I.D. 556 (1976)
28 IBLA 124 (Nov. 16, 1976)
33 IBLA 160 (Dec. 20, 1977)
852 ------------ 3 ANCAB 11; 85 I.D. 219 (1978)
24 IBLA 135 (Mar. 8, 1976)
27 IBLA 137; 83 I.D. 364 (1976)

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28 IBLA 100; 83 I.D. 556 (1976)
33 IBLA 160 (Dec. 20, 1977)
37 IBLA 215 (Oct. 12, 1978)
852(a) ---------33 IBLA 160 (Dec. 20, 1977)
852(a)(1) ------24 IBLA 135 (Mar. 8, 1976)
33 IBLA 160 (Dec. 20, 1977)
852(a)(2) ------24 IBLA 135 (Mar. 8, 1976)
33 IBLA 160 (Dec. 20, 1977)
852(a)(3) ------24 IBLA 135 (Mar. 8, 1976)
859 ------------ M-36908; 86 I.D. 3 (1979)
869 ------------18 IBLA 289; 82 I.D. 1 (1975)
19 IBLA 198 (Mar. 19, 1975)
22 IBLA 107 (Sept. 22, 1975)
22 IBLA 182 (Oct. 7, 1975)
22 IBLA 342 (Nov. 14, 1975)
28 IBLA 210 (Dec. 8, 1976)
34 IBLA 362 (May 1, 1978)
37 IBLA 215 (Oct. 12, 1978)
38 IBLA 382 (Dec. 29, 1978)
40 IBLA 34 (Mar. 15, 1979)
40 IBLA 175 (Apr. 3, 1979)
40 IBLA 355 (May 14, 1979)
43 IBLA 174 (Sept. 28, 1979)
869 et seq. ----19 IBLA 198 (Mar. 19, 1975)
22 IBLA 182 (Oct. 7, 1975)
28 IBLA 210 (Dec. 8, 1976)
29 IBLA 220 (Mar. 23, 1977)
37 IBLA 153 (Oct. 5, 1978)
37 IBLA 215 (Oct. 12, 1978)
38 IBLA 333 (Dec. 20, 1978)
38 IBLA 382 (Dec. 29, 1978)
40 IBLA 175 (Apr. 3, 1979)
40 IBLA 355 (May 14, 1979)
41 IBLA 98 (June 4, 1979)
869(a) ---------18 IBLA 289; 82 I.D. 1 (1975)
22 IBLA 107 (Sept. 22, 1975)
44 IBLA 275 (Dec. 26, 1979)
869-869-3 ------20 IBLA 50 (Apr. 23, 1975)
869-869-4 ------ M-36893 (Supp.); 86 I.D. 627 (1979)
869-1 ----------20 IBLA 50 (Apr. 23, 1975)
22 IBLA 107 (Sept. 22, 1975)
37 IBLA 215 (Oct. 12, 1978)
40 IBLA 355 (May 14, 1979)
869-1(a) -------18 IBLA 289; 82 I.D. 1 (1975)
22 IBLA 342 (Nov. 14, 1975)
869-2 ----------18 IBLA 289; 82 I.D. 1 (1975)
22 IBLA 107 (Sept. 22, 1975)
22 IBLA 342 (Nov. 14, 1975)
28 IBLA 210 (Dec. 8, 1976)
38 IBLA 333 (Dec. 20, 1978)
40 IBLA 355 (May 14, 1979)
41 IBLA 98 (June 4, 1979)
869-3 ----------41 IBLA 98 (June 4, 1979)
870 ------------22 IBLA 44 (Sept. 15, 1975)
870-871 --------27 IBLA 137; 83 I.D. 364 (1976)
871a -----------22 IBLA 44 (Sept. 15, 1975)
27 IBLA 137; 83 I.D. 364 (1976)
872 ------------25 IBLA 283 (June 28, 1976)
28 IBLA 118 (Nov. 15, 1976)
42 IBLA 355 (Sept. 11, 1979)
891 et seq. ----27 IBLA 256 (Oct. 20, 1976)
894-899 --------20 IBLA 365 (June 12, 1975)
23 IBLA 232; 83 I.D. 1 (1976)
897 ------------23 IBLA 232; 83 I.D. 1 (1976)
898 ------------20 IBLA 365 (June 12, 1975)
32 IBLA 218 (Sept. 19, 1977)
35 IBLA 270 (June 2, 1978)
912 ------------27 IBLA 137; 83 I.D. 364 (1976)
931 ------------19 IBLA 139 (Mar. 7, 1975)
40 IBLA 12 (Mar. 9, 1979)
41 IBLA 132 (June 14, 1979)
932 ------------25 IBLA 44 (May 13, 1976)
26 IBLA 281 (Aug. 26, 197)

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27 IBLA 278; 83 I.D. 518 (1976)
35 IBLA 279; 85 I.D. 186 (1978)
934 ------------27 IBLA 137; 83 I.D. 364 (1976)
934 *et seq.* ----24 IBLA 166; 83 I.D. 80 (1976)
24 IBLA 360; 83 I.D. 194 (1976)
934-939 --------27 IBLA 137; 83 I.D. 364 (1976)
936 ------------27 IBLA 137; 83 I.D. 364 (1976)
940 ------------27 IBLA 137; 83 I.D. 364 (1976)
942-1 ---------- 3 ANCAB 297; 86 I.D. 381 (1979)
945 ------------ 2 ANCAB 1; 84 I.D. 349 (1977)
29 IBLA 210 (Mar. 22, 1977)
945a -----------29 IBLA 210 (Mar. 22, 1977)
946 ------------ 7 IBIA 299; 86 I.D. 680 (1979)
24 IBLA 49 (Feb. 23, 1976)
946 *et seq.* ----24 IBLA 49 (Feb. 23, 1976)
33 IBLA 225 (Dec. 28, 1977)
40 IBLA 280 (Apr. 18, 1979)
947-949 --------34 IBLA 146 (Mar. 10, 1978)
M-36886; 84 I.D. 1 (1977)
M-36908; 86 I.D. 3 (1979)
951 ------------ M-36886; 84 I.D. 1 (1977)
M-36908; 86 I.D. 3 (1979)
952 ------------33 IBLA 225 (Dec. 28, 1977)
956 ------------27 IBLA 278; 83 I.D. 518 (1976)
34 IBLA 164 (Mar. 14, 1978)
959 ------------22 IBLA 342 (Nov. 14, 1975)
25 IBLA 171 (June 14, 1976)
25 IBLA 257 (June 23, 1976)
25 IBLA 303 (June 28, 1976)
26 IBLA 175 (Aug. 6, 1976)
32 IBLA 384 (Nov. 3, 1977)
33 IBLA 386 (Jan. 26, 1978)
35 IBLA 53 (May 9, 1978)
36 IBLA 313 (Aug. 23, 1978)
40 IBLA 180 (Apr. 3, 1979)
M-36886; 84 I.D. 1 (1977)
M-36908; 86 I.D. 3 (1979)
961 ------------25 IBLA 171 (June 14, 1976)
25 IBLA 341 (June 30, 1976)
26 IBLA 393; 83 I.D. 332 (1976)
29 IBLA 57 (Feb. 16, 1977)
32 IBLA 205 (Sept. 19, 1977)
34 IBLA 146 (Mar. 10, 1978)
35 IBLA 279; 85 I.D. 186 (1978)
35 IBLA 325; 85 I.D. 207 (1978)
36 IBLA 260 (Aug. 15, 1978)
39 IBLA 182 (Jan. 31, 1979)
M-36886; 84 I.D. 1 (1977)
M-36908; 86 I.D. 3 (1979)
975b -----------38 IBLA 382 (Dec. 29, 1978)
975(d) --------- 2 ANCAB 1; 84 I.D. 349 (1977)
981 *et seq.* ----31 IBLA 304; 84 I.D. 421 (1977)
981-986 --------21 IBLA 33 (June 17, 1975)
22 IBLA 318 (Nov. 10, 1975)
982 ------------21 IBLA 33 (June 17, 1975)
22 IBLA 318 (Nov. 10, 1975)
29 IBLA 132 (Feb. 23, 1977)
31 IBLA 304; 84 I.D. 421 (1977)
43 IBLA 271 (Oct. 15, 1979)
982 *et seq.* ----32 IBLA 129 (Sept. 12, 1977)
983 ------------21 IBLA 33 (June 17, 1975)
984 ------------21 IBLA 33 (June 17, 1975)
987 ------------31 IBLA 304; 84 I.D 421 (1977)
1001 ------------28 IBLA 79 (Nov. 12, 1976)
1002 ------------33 IBLA 160 (Dec. 20, 1977)
1061 ------------20 IBLA 156 (May 5, 1975)
38 IBLA 353 (Dec. 22, 1978)
1064 ------------38 IBLA 353 (Dec. 22, 1978)
1068 ------------21 IBLA 33 (June 17, 1975)
21 IBLA 193 (July 28, 1975)
22 IBLA 299 (Nov. 4, 1975)
22 IBLA 318 (Nov. 10, 1975)
23 IBLA 232; 83 I.D. 1 (1976)
23 IBLA 358; 83 I.D. 23 (1976)

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25 IBLA 213 (June 16, 1976)
25 IBLA 283 (June 28, 1976)
26 IBLA 102 (July 20, 1976)
27 IBLA 213 (Oct. 6, 1976)
28 IBLA 205; 83 I.D. 617 (1976)
30 IBLA 320; 84 I.D. 276 (1977)
31 IBLA 145 (June 30, 1977)
31 IBLA 304; 84 I.D. 421 (1977)
32 IBLA 129 (Sept. 12, 1977)
32 IBLA 228 (Sept. 20, 1977)
32 IBLA 378 (Nov. 1, 1977)
33 IBLA 225 (Dec. 28, 1977)
35 IBLA 79 (May 12, 1978)
35 IBLA 257 (May 31, 1978)
39 IBLA 15; 86 I.D. 22 (1979)
39 IBLA 258 (Feb. 15, 1979)
41 IBLA 268 (June 28, 1979)
42 IBLA 36 (July 31, 1979)
42 IBLA 117 (Aug. 16, 1979)
42 IBLA 176 (Aug. 22, 1979)
43 IBLA 348 (Oct. 29, 1979)
1068 *et seq.* ----25 IBLA 283 (June 28, 1976)
29 IBLA 146 (Mar. 4, 1977)
30 IBLA 320; 84 I.D. 276 (1977)
32 IBLA 228 (Sept. 20, 1977)
32 IBLA 378 (Nov. 1, 1977)
35 IBLA 208 (May 26, 1978)
37 IBLA 247 (Oct. 18, 1978)
38 IBLA 118 (Nov. 22, 1978)
39 IBLA 15; 86 I.D. 22 (1979)
39 IBLA 258 (Feb. 15, 1979)
1068a ---------- 21 IBLA 193 (July 28, 1975)
25 IBLA 213 (June 16, 1976)
35 IBLA 208 (May 26, 1978)
39 IBLA 258 (Feb. 15, 1979)
42 IBLA 36 (July 31, 1979)
1068a-1068b ---- 44 IBLA 110 (Nov. 27, 1979)
1068b ---------- 29 IBLA 146 (Mar. 4, 1977)
1074 ------------22 IBLA 242 (Oct. 22, 1975)
1137(a) --------- M-36888; 84 I.D. 54 (1977)
1141 *et seq.* ----24 IBLA 147 (Mar. 10, 1976)
1161 ------------32 IBLA 272 (Sept. 27, 1977)
1161-1163 -------21 IBLA 81 (June 27, 1975)
26 IBLA 378 (Sept. 9, 1976)
28 IBLA 132 (Nov. 19, 1976)
1161-1164 -------22 IBLA 160 (Sept. 30, 1975)
1161-1165 -------41 IBLA 13 (May 22, 1979)
1162 ------------41 IBLA 41 (May 29, 1979)
1164 ------------28 IBLA 132 (Nov. 19, 1976)
35 IBLA 79 (May 12, 1978)
1165 ------------25 IBLA 247 (June 23, 1976)
26 IBLA 41; 83 I.D. 280 (1976)
29 IBLA 192 (Mar. 18, 1977)
39 IBLA 321 (Feb. 27, 1979)
1166 ------------21 IBLA 190 (July 28, 1975)
35 IBLA 79 (May 12, 1978)
37 IBLA 215 (Oct. 12, 1978)
1171 ------------ 2 ANCAB 214; 84 I.D. 982 (1977)
24 IBLA 58 (Feb. 23, 1976)
24 IBLA 195 (Mar. 19, 1976)
26 IBLA 127 (July 30, 1976)
26 IBLA 194 (Aug. 11, 1976)
33 IBLA 182 (Dec. 21, 1977)
33 IBLA 262 (Jan. 5, 1978)
33 IBLA 358 (Jan. 18, 1978)
34 IBLA 219 (Mar. 27, 1978)
39 IBLA 141 (Jan. 29, 1979)
41 IBLA 13 (May 22, 1979)
43 IBLA 130 (Sept. 26, 1979)
1171 *et seq.* ----33 IBLA 182 (Dec. 21, 1977)
1181 *et seq.* ---- M-36914; 86 I.D. 553 (1979)
1181a -----------26 IBLA 281 (Aug. 26, 1976)
33 IBLA 91 (Dec. 16, 1977)
39 IBLA 205 (Feb. 2, 1979)

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	44 IBLA 51 (Nov. 19, 1979)
	M-36910; 86 I.D. 89 (1979)
1181a-1181j	30 IBLA 277 (June 1, 1977)
	39 IBLA 176 (Jan. 30, 1979)
	M-36910; 86 I.D. 89 (1979)
1181e	39 IBLA 205 (Feb. 2, 1979)
1201	32 IBLA 174; 84 I.D. 475 (1977)
	35 IBLA 146; 85 I.D. 129 (1978)
	37 IBLA 80 (Sept. 22, 1978)
	38 IBLA 353 (Dec. 22, 1978)
	44 IBLA 275 (Dec. 26, 1979)
1211	26 IBLA 378 (Sept. 9, 1976)
1301	4 ANCAB 50; 86 I.D. 692 (1979)
1301 *et seq.*	2[illegible] IBLA 96 (June 3, 1976)
	M-36911; 86 I.D. 151 (1979)
1301-1303	4 ANCAB 50; 86 I.D. 692 (1979)
1301-1315	3 ANCAB 297; 86 I.D. 381 (1979)
	28 IBLA 83 (Nov. 12, 1976)
	M-36911; 86 I.D. 151 (1979)
1301-1343	41 IBLA 207; 86 I.D. 342 (1979)
1311 *et seq.*	21 IBLA 1 (June 16, 1975)
1311-1315	4 ANCAB 50; 86 I.D. 692 (1979)
1313(a)	3 ANCAB 297; 86 I.D. 381 (1979)
	M-36911; 86 I.D. 151 (1979)
1313(b)	41 IBLA 207; 86 I.D. 342 (1979)
1315	41 IBLA 207; 86 I.D. 342 (1979)
1331-1343	41 IBLA 195 (June 22, 1979)
	M-36888; 84 I.D. 54 (1977)
	M-36888 (Supp.); 84 I.D. 64 (1977)
1334	20 IBLA 248 (May 16, 1975)
	31 IBLA 127 (June 30, 1977)
1334(a)(1)	36 IBLA 185; 85 I.D. 347 (1978)
	M-36888 (Supp.); 84 I.D. 64 (1977)
1334(a)(2)	M-36888 (Supp.); 84 I.D. 64 (1977)
1335	21 IBLA 137 (July 15, 1975)
	27 IBLA 15 (Sept. 17, 1976)
	31 IBLA 127 (June 30, 1977)
1335(a)	31 IBLA 127 (June 30, 1977)
1335(b)	31 IBLA 127 (June 30, 1977)
1337	27 IBLA 15 (Sept. 17, 1976)
	31 IBLA 127 (June 30, 1976)
1339	39 IBLA 393 (Mar. 2, 1979)
1364	40 IBLA 12 (Mar. 9, 1979)
	41 IBLA 13 (May 22, 1979)
1371	20 IBLA 120 (Apr. 25, 1975)
	20 IBLA 302 (May 30, 1975)
	22 IBLA 143 (Sept. 30, 1975)
	26 IBLA 232 (Aug. 17, 1976)
	34 IBLA 136 (Mar. 8, 1978)
	44 IBLA 213 (Dec. 11, 1979)
1372	20 IBLA 120 (Apr. 25, 1975)
1374	27 IBLA 61 (Sept. 27, 1976)
	30 IBLA 118 (May 2, 1977)
1391 *et seq.*	26 IBLA 313 (Aug. 30, 1976)
1411 *et seq.*	21 IBLA 258 (Aug. 11, 1975)
	24 IBLA 147 (Mar. 10, 1976)
	32 IBLA 77 (Sept. 2, 1977)
	M-36914; 86 I.D. 553 (1979)
1411-1418	20 IBLA 330 (June 6, 1975)
	21 IBLA 258 (Aug. 11, 1975)
	21 IBLA 347 (Aug. 18, 1975)
	23 IBLA 280 (Jan. 12, 1976)
	26 IBLA 194 (Aug. 11, 1976)
	26 IBLA 270 (Aug. 24, 1976)
	32 IBLA 77 (Sept. 2, 1977)
	39 IBLA 141 (Jan. 29, 1979)
	43 IBLA 130 (Sept. 26, 1979)
1414	24 IBLA 147 (Mar. 10, 1976)
	32 IBLA 77 (Sept. 2, 1977)
1416	M-36914; 86 I.D. 553 (1979)
1418	M-36914; 86 I.D. 553 (1979)

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sec. 1431	24 IBLA 5 (Feb. 4, 1976)
	41 IBLA 13 (May 22, 1979)
1431 *et seq.*	24 IBLA 190 (Mar. 18, 1976)
	26 IBLA 313 (Aug. 30, 1976)
1431-35	19 IBLA 75 (Feb. 26, 1975)
	22 IBLA 299 (Nov. 4, 1975)
	24 IBLA 5 (Feb. 4, 1976)
	24 IBLA 347 (Apr. 23, 1976)
	27 IBLA 308 (Oct. 29, 1976)
	31 IBLA 210 (July 6, 1977)
	38 IBLA 340 (Dec. 20, 1978)
	41 IBLA 13 (May 22, 1979)
1432	41 IBLA 13 (May 22, 1979)
1435	19 IBLA 75 (Feb. 26, 1975)
	41 IBLA 13 (May 22, 1979)
1457	24 IBLA 221 (Mar. 24, 1976)
	26 IBLA 208 (Aug. 16, 1976)
	37 IBLA 7 (Sept. 6, 1978)
	37 IBLA 80 (Sept. 22, 1978)
1464	M-36883; 83 I.D. 131 (1976)
	36 IBLA 111 (July 14, 1978)
1601	2 ANCAB 142 (Sept. 23, 1977)
	2 ANCAB 358 (Mar. 31, 1978)
	3 ANCAB 1; 85 I.D. 200 (1978)
	3 ANCAB 21 (June 21, 1978)
	3 ANCAB 27 (June 26, 1978)
	3 ANCAB 65 (July 11, 1978)
	3 ANCAB 89 (Oct. 24, 1978)
	3 ANCAB 129; 86 I.D. 45 (1979)
	3 ANCAB 140; 86 I.D. 55 (1979)
	3 ANCAB 153; 86 I.D. 60 (1979)
	3 ANCAB 334 (Aug. 31, 1979)
	7 IBIA 157; 86 I.D. 333 (1979)
	41 IBLA 13 (May 22, 1979)
	41 IBLA 214 (June 27, 1979)
	41 IBLA 219 (June 27, 1979)
	41 IBLA 315; 86 I.D. 361 (1979)
	41 IBLA 382 (July 23, 1979)
	42 IBLA 82 (Aug. 13, 1979)
	42 IBLA 86 (Aug. 13, 1979)
	42 IBLA 260 (Aug. 27, 1979)
	43 IBLA 245 (Oct. 10, 1979)
	43 IBLA 266 (Oct. 15, 1979)
	M-36880; 82 I.D. 325 (1975)
1601 *et seq.*	1 ANCAB 334 (Apr. 15, 1977)
	3 ANCAB 49; 85 I.D. 229 (1978)
	4 ANCAB 50; 86 I.D. 692 (1979)
	7 IBIA 128; 86 I.D. 217 (1979)
	19 IBLA 178 (Mar. 18, 1975)
	19 IBLA 242 (Mar. 27, 1975)
	19 IBLA 312 (Apr. 7, 1975)
	19 IBLA 320 (Apr. 7, 1975)
	20 IBLA 47 (Apr. 21, 1975)
	20 IBLA 174 (May 7, 1975)
	20 IBLA 284 (May 27, 1975)
	20 IBLA 290 (May 27, 1975)
	21 IBLA 157 (July 21, 1975)
	21 IBLA 173 (July 25, 1975)
	22 IBLA 56 (Sept. 17, 1975)
	22 IBLA 191 (Oct. 15, 1975)
	32 IBLA 5 (Aug. 24, 1977)
	33 IBLA 354 (Jan. 18, 1978)
	35 IBLA 349 (June 19, 1978)
	40 IBLA 79 (Mar. 22, 1979)
	41 IBLA 248 (June 27, 1979)
	41 IBLA 296 (June 29, 1979)
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	M-36910; 86 I.D. 89 (1979)
	M-36911; 86 I.D. 151 (1979)
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1601-1624	1 ANCAB 190; 83 I.D. 619 (1976)
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1 ANCAB 305; 84 I.D. 105 (1977)
1 ANCAB 317 (Apr. 8, 1977)
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1 ANCAB 327 (Apr. 15, 1977)
1 ANCAB 334 (Apr. 15, 1977)
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1 ANCAB 345 (May 4, 1977)
1 ANCAB 348 (May 4, 1977)
1 ANCAB 351 (May 4, 1977)
1 ANCAB 354 (May 4, 1977)
2 ANCAB 1; 84 I.D. 349 (1977)
2 ANCAB 98 (July 15, 1977)
2 ANCAB 115 (July 15, 1977)
2 ANCAB 123 (July 25, 1977)
2 ANCAB 126 (Aug. 4, 1977)
2 ANCAB 134 (Aug. 4, 1977)
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2 ANCAB 150; 84 I.D. 891 (1977)
2 ANCAB 166 (Nov. 16, 1977)
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2 ANCAB 191 (Dec. 19, 1977)
2 ANCAB 195 (Dec. 19, 1977)
2 ANCAB 199 (Dec. 19, 1977)
2 ANCAB 203 (Dec. 19, 1977)
2 ANCAB 207 (Dec. 19, 1977)
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2 ANCAB 214; 84 I.D. 982 (1977)
2 ANCAB 223 (Dec. 20, 1977)
2 ANCAB 227 (Dec. 20, 1977)
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2 ANCAB 235 (Dec. 20, 1977)
2 ANCAB 239 (Dec. 20, 1977)
2 ANCAB 243 (Dec. 20, 1977)
2 ANCAB 247; 84 I.D. 1007 (1977)
2 ANCAB 258; 84 I.D. 1015 (1977)
2 ANCAB 264 (Jan. 23, 1978)
2 ANCAB 269 (Jan. 26, 1978)
2 ANCAB 272 (Jan. 26, 1978)
2 ANCAB 275 (Jan. 27, 1978)
2 ANCAB 277 (Jan. 26, 1978)
2 ANCAB 284 (Feb. 1, 1978)
2 ANCAB 289; 85 I.D. 27 (1978)
2 ANCAB 298 (Feb. 13, 1978)
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2 ANCAB 316 (Mar. 2, 1978)
2 ANCAB 325 (Mar. 9, 1978)
2 ANCAB 327 (Mar. 22, 1978)
2 ANCAB 329 (Mar. 24, 1978)
2 ANCAB 336 (Mar. 24, 1978)
2 ANCAB 350 (Mar. 28, 1978)
2 ANCAB 363 (Mar. 31, 1978)
2 ANCAB 371 (May 9, 1978)
2 ANCAB 376 (May 9, 1978)
2 ANCAB 379; 85 I.D. 97 (1978)
3 ANCAB 1; 85 I.D. 200 (1978)
3 ANCAB 11; 85 I.D. 219 (1978)
3 ANCAB 21 (June 21, 1978)
3 ANCAB 27 (June 26, 1978)
3 ANCAB 37 (July 3, 1978)
3 ANCAB 49; 85 I.D. 229 (1978)
3 ANCAB 65 (July 11, 1978)
3 ANCAB 74 (Aug. 10, 1978)
3 ANCAB 77 (Aug. 17, 1978)
3 ANCAB 85 (Sept. 14, 1978)
3 ANCAB 89 (Oct. 24, 1978)
3 ANCAB 96 (Nov. 20, 1978)
3 ANCAB 100 (Nov. 20, 1978)
3 ANCAB 105 (Dec. 11, 1978)
3 ANCAB 108 (Dec. 18, 1978)
3 ANCAB 111; 85 I.D. 462 (1978)

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3 ANCAB 127 (Jan. 15, 1979)
3 ANCAB 140; 86 I.D. 55 (1979)
3 ANCAB 153; 86 I.D. 60 (1979)
3 ANCAB 165 (Feb. 22, 1979)
3 ANCAB 168; 86 I.D. 189 (1979)
3 ANCAB 182 (Mar. 20, 1979)
3 ANCAB 190 (Apr. 6, 1979)
3 ANCAB 193 (Apr. 11, 1979)
3 ANCAB 196; 86 I.D. 225 (1979)
19 IBLA 211 (Mar. 21, 1975)
19 IBLA 316 (Apr. 7, 1975)
20 IBLA 253 (May 16, 1975)
22 IBLA 220 (Oct. 15, 1975)
M-36877; 82 I.D. 14 (1975)
1601-1627 ------- 3 ANCAS 219; 86 I.D. 257 (1979)
3 ANCAB 238; 86 I.D. 285 (1979)
3 ANCAB 252 (May 16, 1979)
3 ANCAB 258 (May 18, 1979)
3 ANCAB 261 (May 24, 1979)
1601-1628 ------- 3 ANCAB 273; 86 I.D. 523 (1979)
3 ANCAB 280 (June 8, 1979)
3 ANCAB 285 (June 11, 1979)
3 ANCAB 291 (June 29, 1979)
3 ANCAB 294 (July 10, 1979)
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3 ANCAB 321 (Aug. 17, 1979)
3 ANCAB 325; 86 I.D. 392 (1979)
3 ANCAB 334 (Aug. 31, 1979)
3 ANCAB 346 (Aug. 31, 1979)
3 ANCAB 351; 86 I.D. 452 (1979)
3 ANCAB 365 (Sept. 19, 1979)
3 ANCAB 371 (Sept. 19, 1979)
3 ANCAB 377 (Sept. 21, 1979)
3 ANCAB 383 (Sept. 25, 1979)
4 ANCAB 1 (Oct. 17, 1979)
4 ANCAB 3; 86 I.D. 618 (1979)
4 ANCAB 17 Oct. 31, 1979)
4 ANCAB 24; 86 I.D. 663 (1979)
4 ANCAB 50; 86 I.D. 692 (1979)
4 ANCAB 108 (Dec. 19, 1979)
4 ANCAB 110 (Dec. 19, 1979)
41 IBLA 85 (June 4, 1979)
42 IBLA 1 (July 25, 1979)
42 IBLA 269 (Aug. 27, 1979)
42 IBLA 370; 86 I.D. 441 (1979)
43 IBLA 186 (Oct. 5, 1979)
1601-1629 ------- Sec. Order No. 3016; 85 I.D. 1 (1978)
1603 ------------20 IBLA 169 (May 7, 1975)
20 IBLA 290 (May 27, 1975)
20 IBLA 387 (June 16, 1975)
21 IBLA 207 (July 30, 1975)
28 IBLA 83 (Nov. 12, 1976)
43 IBLA 186 (Oct. 5, 1979)
1603(b) ---------20 IBLA 387 (June 16, 1975)
1603(c) ---------20 IBLA 387 (June 16, 1975)
21 IBLA 173 (July 25, 1975)
28 IBLA 83 (Nov. 12, 1976)
41 IBLA 315; 86 I.D. 361 (1979)
1610 ------------20 IBLA 50 (Apr. 23, 1975)
21 IBLA 292 (Aug. 11, 1975)
24 IBLA 240 (Mar. 25, 1976)
42 IBLA 200 (Aug. 22, 1979)
1 SEC. 1; 84 I.D. 176 (1977)
1610(a) --------- 3 ANCAB 325; 86 I.D. 392 (1979)
42 IBLA 200 (Aug. 22, 1979)
1610(a)(1) ------19 IBLA 178 (Mar. 18, 1975)
19 IBLA 242 (Mar. 27, 1975)
19 IBLA 316 (Apr. 7, 1975)
19 IBLA 320 (Apr. 7, 1975)
20 IBLA 50 (Apr. 23, 1975)
1 SEC. 1; 84 I.D. 176 (1977)

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1610(a)(2) ------19 IBLA 178 (Mar. 18, 1975)
19 IBLA 242 (Mar. 27, 1975)
19 IBLA 316 (Apr. 7, 1975)
1 SEC. 1; 84 I.D. 176 (1977)
1610(b)(2) ------ M-36877; 82 I.D. 14 (1975)
1611 ------------ 3 ANCAB 111; 85 I.D. 462 (1978)
3 ANCAB 140; 86 I.D. 55 (1979)
19 IBLA 178 (Mar. 18, 1975)
19 IBLA 242 (Mar. 27, 1975)
1 SEC. 1; 84 I.D. 176 (1977)
1611(a) --------- 3 ANCAB 325; 86 I.D. 392 (1979)
1611(a)(1) ------19 IBLA 178 (Mar. 18, 1975)
19 IBLA 242 (Mar. 27, 1975)
19 IBLA 316 (Apr. 7, 1975)
1612(b) ---------19 IBLA 178 (Mar. 18, 1975)
1613(a) --------- 2 ANCAB 264 (Jan. 23, 1978)
2 ANCAB 295 (May 25, 1978)
3 ANCAB 334 (Aug. 31, 1979)
4 ANCAB 24; 86 I.D. 663 (1979)
19 IBLA 178 (Mar. 18, 1975)
1613(c) --------- 3 ANCAB 1; 85 I.D. 200 (1978)
3 ANCAB 21 (June 21, 1978)
3 ANCAB 27 (June 26, 1978)
3 ANCAB 65 (July 11, 1978)
3 ANCAB 334 (Aug. 29, 1979)
1613(e) --------- 1 SEC. 1; 84 I.D. 176 (1977)
1613(f) --------- 1 SEC. 1; 84 I.D. 176 (1977)
1613(g) --------- 2 ANCAB 358 (Mar. 31, 1978)
3 ANCAB 89 (Oct. 24, 1978)
3 ANCAB 129; 86 I.D. 45 (1979)
3 ANCAB 140; 86 I.D. 55 (1979)
3 ANCAB 153; 86 I.D. 60 (1979)
3 ANCAB 325; 86 I.D. 392 (1979)
19 IBLA 178 (Mar. 18, 1975)
42 IBLA 200 (Aug. 22, 1979)
1 SEC. 1; 84 I.D. 176 (1977)
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1613(h)(5) ------22 IBLA 296 (Nov. 3, 1975)
29 IBLA 160 (Mar. 9, 1977)
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1615(a) --------- 1 SEC. 1; 84 I.D. 176 (1977)
1616 ------------ 2 ANCAB 1; 84 I.D. 349 (1977)
19 IBLA 283 (Apr. 7, 1975)
1616(d)(1) ------20 IBLA 59; 82 I.D. 174 (1975)
28 IBLA 378 (Feb. 4, 1977)
35 IBLA 349 (June 19, 1978)
41 IBLA 85 (June 4, 1979)
1616(d)(2) ------35 IBLA 349 (June 19, 1978)
37 IBLA 346 (Oct. 27, 1978)
1616(d)(2)(C) ---31 IBLA 43 (June 21, 1977)
35 IBLA 61 (May 10, 1978)
1617 ------------18 IBLA 418 (Feb. 10, 1975)
19 IBLA 68 (Feb. 25, 1975)
20 IBLA 162 (May 5, 1975)
20 IBLA 169 (May 7, 1975)
20 IBLA 387 (June 16, 1975)
21 IBLA 54 (June 18, 1975)
21 IBLA 152 (July 16, 1975)
21 IBLA 157 (July 21, 1975)
21 IBLA 173 (July 25, 1975)
21 IBLA 207 (July 30, 1975)
21 IBLA 223 (July 31, 1975)
21 IBLA 292 (Aug. 11, 1975)
22 IBLA 38 (Sept. 10, 1975)
22 IBLA 54 (Sept. 17, 1975)
22 IBLA 56 (Sept. 17, 1975)
22 IBLA 233 (Oct. 22, 1975)
22 IBLA 247 (Oct. 22, 1975)
22 IBLA 266 (Oct. 30, 1975)
22 IBLA 287 (Oct. 30, 1975)
22 IBLA 388 (Nov. 24, 1975)
23 IBLA 17 (Nov. 26, 1975)
23 IBLA 36 (Dec. 2, 1975)
23 IBLA 54 (Dec. 4, 1975)

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23 IBLA 77 (Dec. 12, 1975)
23 IBLA 79 (Dec. 11, 1975)
23 IBLA 81 (Dec. 12, 1975)
23 IBLA 95 (Dec. 18, 1975)
23 IBLA 120 (Dec. 23, 1975)
23 IBLA 124 (Dec. 23, 1975)
23 IBLA 128 (Dec. 23, 1975)
23 IBLA 134 (Dec. 23, 1975)
23 IBLA 151 (Dec. 23, 1975)
23 IBLA 159 (Dec. 23, 1975)
23 IBLA 174 (Dec. 31, 1975)
23 IBLA 188 (Jan. 5, 1976)
23 IBLA 205 (Jan. 6, 1976)
23 IBLA 276 (Jan. 12, 1976)
23 IBLA 288 (Jan. 12, 1976)
23 IBLA 299 (Jan. 14, 1976)
23 IBLA 304 (Jan. 16, 1976)
23 IBLA 314 (Jan. 16, 1976)
23 IBLA 346 (Jan. 21, 1976)
26 IBLA 1 (July 6, 1976)
28 IBLA 83 (Nov. 12, 1976)
29 IBLA 250 (Mar. 25, 1977)
29 IBLA 255 (Mar. 25, 1977)
31 IBLA 21 (June 20, 1977)
40 IBLA 321; 86 I.D. 279 (1979)
41 IBLA 44 (May 29, 1979)
41 IBLA 169 (June 22, 1979)
41 IBLA 179 (June 22, 1979)
41 IBLA 224 (June 27, 1979)
41 IBLA 280; 86 I.D. 345 (1979)
41 IBLA 296 (June 29, 1979)
41 IBLA 309 (July 5, 1979)
41 IBLA 315; 86 I.D. 361 (1979)
41 IBLA 382 (July 23, 1979)
42 IBLA 1 (July 25, 1979)
42 IBLA 51 (July 31, 1979)
42 IBLA 155 (Aug. 19, 1979)
42 IBLA 231 (Aug. 22, 1979)
42 IBLA 269 (Aug. 27, 1979)
42 IBLA 276 (Aug. 27, 1979)
42 IBLA 370; 86 I.D. 441 (1979)
43 IBLA 69 (Sept. 19, 1979)
43 IBLA 74 (Sept. 19, 1979)
43 IBLA 174 (Sept. 28, 1979)
43 IBLA 284 (Oct. 17, 1979)
43 IBLA 288 (Oct. 17, 1979)
43 IBLA 296 (Oct. 17, 1979)
44 IBLA 99 (Nov. 20, 1979)
44 IBLA 313 (Dec. 31, 1979)
1617(a) ---------22 IBLA 296 (Nov. 3, 1975)
23 IBLA 170 (Dec. 29, 1975)
42 IBLA 59 (Aug. 2, 1979)
43 IBLA 14 (Sept. 11, 1979)
43 IBLA 74 (Sept. 19, 1979)
1618 ------------21 IBLA 116 (June 30, 1975)
1621(b) --------- 3 ANCAB 334 (Aug. 31, 1979)
31 IBLA 242 (July 18, 1977)
Sec. Order No. 3016; 85 I.D.
1 (1978)
1621(c) --------- Sec. Order No. 3016; 85 I.D.
1 (1978)
1621(i) --------- 2 ANCAB 247; 84 I.D. 1007
(1977)
2 ANCAB 277 (Jan. 26, 1978)
2 ANCAB 302 (Feb. 21, 1978)
3 ANCAB 34 (June 27, 1978)
3 ANCAB 37 (July 3, 1978)
3 ANCAB 49; 85 I.D. 229 (1978)
20 IBLA 47 (Apr. 21, 1975)
1 SEC. 1; 84 I.D. 176 (1977)
1624 ------------19 IBLA 178 (Mar. 18, 1975)
41 IBLA 85 (June 4, 1979)
1652(b) ---------40 IBLA 48 (Mar. 15, 1979)

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sec. 1701 ------------30 IBLA 148 (May 16, 1977)
32 IBLA 142 (Sept. 12, 1977)
33 IBLA 7 (Nov. 15, 1977)
33 IBLA 240 (Dec. 28, 1977)
34 IBLA 81 (Feb. 22, 1978)
34 IBLA 164 (Mar. 14, 1978)
36 IBLA 4 (June 27, 1978)
37 IBLA 120 (Oct. 3, 1978)
42 IBLA 164 (Aug. 17, 1979)
42 IBLA 190 (Aug. 22, 1979)
44 IBLA 51 (Nov. 19, 1979)
44 IBLA 275 (Dec. 26, 1979)
M-36910; 86 I.D. 89 (1979)
M-36914; 86 I.D. 553 (1979)
1701 *et seq.* ----30 IBLA 112 (May 2, 1977)
30 IBLA 277 (June 1, 1977)
30 IBLA 354 (June 9, 1977)
32 IBLA 89 (Sept. 2, 1977)
33 IBLA 7 (Nov. 15, 1977)
33 IBLA 32 (Nov. 25, 1977)
33 IBLA 47 (Nov. 25, 1977)
33 IBLA 262 (Jan. 5, 1978)
34 IBLA 219 (Mar. 27, 1978)
35 IBLA 79 (May 12, 1978)
38 IBLA 1 (Nov. 8, 1978)
38 IBLA 160 (Dec. 5, 1978)
38 IBLA 327 (Dec. 19, 1978)
39 IBLA 62 (Jan. 17, 1979)
40 IBLA 209 (Apr. 10, 1979)
40 IBLA 222; 86 I.D. 234 (1979)
40 IBLA 257 (Apr. 16, 1979)
41 IBLA 13 (May 22, 1979)
41 IBLA 132 (June 14, 1979)
M-36910; 86 I.D. 89 (1979)
M-36914; 86 I.D. 553 (1979)
1701(a)(5) ------38 IBLA 382 (Dec. 29, 1978)
1701(a)(7) ------43 IBLA 110 (Sept. 24, 1979)
1701(a)(8) ------ M-36914; 86 I.D. 553 (1979)
1701(a)(9) ------33 IBLA 142 (Dec. 19, 1977)
M-36900; 86 I.D. 293 (1979)
1701(b) ---------42 IBLA 345 (Aug. 31, 1979)
1701(h) ---------40 IBLA 180 (Apr. 3, 1979)
M-36910; 86 I.D. 89 (1979)
1701-1782 ------- 3 ANCAB 273; 86 I.D. 397 (1979)
3 ANCAB 377 (Sept. 21, 1979)
3 ANCAB 351; 86 I.D. 452 (1979)
31 IBLA 43 (June 21, 1977)
42 IBLA 345 (Aug. 31, 1979)
43 IBLA 210; 86 I.D. 538 (1979)
1702 ------------42 IBLA 200 (Aug. 22, 1979)
42 IBLA 345 (Aug. 31, 1979)
1702(a) --------- M-36914; 86 I.D. 553 (1979)
1702(c) ---------43 IBLA 110 (Sept. 24, 1979)
M-36914; 86 I.D. 553 (1979)
1702(e) --------- 3 ANCAB 273; 86 I.D. 397 (1979)
3 ANCAB 351; 86 I.D. 452 (1979)
41 IBLA 253 (June 28, 1979)
42 IBLA 345 (Aug. 31, 1979)
1702(e)(1) ------ M-36910; 86 I.D. 89 (1979)
1702(g) ---------41 IBLA 253 (June 28, 1979)
1702(h) ---------39 IBLA 205 (Feb. 2, 1979)
1702(j) ---------38 IBLA 367 (Dec. 22, 1978)
1702(l) --------- M-36910; 86 I.D. 89 (1979)
M-36914; 86 I.D. 553 (1979)
1711 ------------ M-36910; 86 I.D. 89 (1979)
1712 ------------41 IBLA 354 (July 20, 1979)
1712(d) --------- M-36910; 86 I.D. 89 (1979)
1712(e)(3) ------43 IBLA 35 (Sept. 12, 1979)
1713 ------------ 3 ANCAB 351; 86 I.D. 452 (1979)
33 IBLA 262 (Jan. 5, 1978)
1714 ------------30 IBLA 112 (May 2, 1977)
33 IBLA 32 (Nov. 25, 1977)
33 IBLA 47 (Nov. 25, 1977)
1714(a) ---------41 IBLA 85 (June 4, 1979)
1714(e)(1) ------38 IBLA 1 (Nov. 8, 1978)

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1714(l)(1) ------35 IBLA 61 (May 10, 1978)
1715 ------------42 IBLA 345 (Aug. 31, 1979)
1715(d) ---------42 IBLA 345 (Aug. 31, 1979)
1715(c) ---------42 IBLA 345 (Aug. 31, 1979)
1716 ------------36 IBLA 119 (July 25, 1978)
42 IBLA 345 (Aug. 31, 1979)
1716(a) ---------44 IBLA 58 (Nov. 20, 1979)
1716(c) ---------42 IBLA 345 (Aug. 31, 1979)
1718 ------------38 IBLA 382 (Dec. 29, 1978)
1720 ------------33 IBLA 7 (Nov. 15, 1977)
1722 ------------31 IBLA 210 (July 6, 1977)
41 IBLA 13 (May 22, 1979)
1722(a) ---------41 IBLA 13 (May 22, 1979)
1722(b) ---------41 IBLA 13 (May 22, 1979)
1731(d) ---------34 IBLA 374 (May 1, 1978)
1732 ------------31 IBLA 389 (Aug. 19, 1977)
38 IBLA 361 (Dec. 29, 1978)
1732(a) ---------44 IBLA 51 (Nov. 19, 1979)
1732(b) ---------30 IBLA 148 (May 16, 1977)
30 IBLA 354 (June 9, 1977)
32 IBLA 142 (Sept. 12, 1977)
40 IBLA 180 (Apr. 3, 1979)
42 IBLA 167 (Aug. 17, 1979)
44 IBLA 275 (Dec. 26, 1979)
M-36910; 86 I.D. 89 (1979)
1733 ------------38 IBLA 361 (Dec. 29, 1978)
1740 ------------31 IBLA 389 (Aug. 19, 1977)
32 IBLA 317 (Sept. 30, 1977)
33 IBLA 7 (Nov. 15, 1977)
41 IBLA 132 (June 14, 1979)
41 IBLA 372 (July 23, 1979)
42 IBLA 345 (Aug. 31, 1979)
44 IBLA 275 (Dec. 26, 1979)
M-36900; 86 I.D. 293 (1979)
1743 ------------39 IBLA 62 (Jan. 17, 1979)
1744 ------------32 IBLA 305 (Sept. 30, 1977)
33 IBLA 240 (Dec. 28, 1977)
33 IBLA 317 (Jan. 16, 1978)
35 IBLA 35 (May 8, 1978)
35 IBLA 110 (May 15, 1978)
35 IBLA 169 (May 22, 1978)
37 IBLA 1 (Sept. 6, 1978)
37 IBLA 88 (Sept. 22, 1978)
37 IBLA 120 (Oct. 3, 1978)
38 IBLA 385 (Dec. 29, 1978)
39 IBLA 32 (Jan. 15, 1979)
39 IBLA 72 (Jan. 24, 1979)
39 IBLA 306 (Feb. 23, 1979)
40 IBLA 88 (Mar. 22, 1979)
40 IBLA 212 (Apr. 10, 1979)
41 IBLA 92 (June 4, 1979)
41 IBLA 142 (June 14, 1979)
41 IBLA 302 (June 29, 1979)
42 IBLA 18 (July 25, 1979)
42 IBLA 56 (Aug. 1, 1979)
42 IBLA 139 (Aug. 16, 1979)
42 IBLA 144 (Aug. 16, 1979)
42 IBLA 288 (Aug. 27, 1979)
42 IBLA 292 (Aug. 27, 1979)
42 IBLA 383 (Sept. 11, 1979)
42 IBLA 391 (Sept. 11, 1979)
43 IBLA 1 (Sept. 11, 1979)
43 IBLA 10 (Sept. 11, 1979)
43 IBLA 182 (Sept. 28, 1979)
43 IBLA 210; 86 I.D. 538 (1979)
43 IBLA 239 (Oct. 10, 1979)
43 IBLA 302 (Oct. 17, 1979)
43 IBLA 380 (Oct. 31, 1979)
44 IBLA 11 (Nov. 6, 1979)
44 IBLA 126 (Nov. 27, 1979)
44 IBLA 162 (Nov. 30, 1979)
44 IBLA 192 (Nov. 30, 1979)
44 IBLA 250 (Dec. 19, 1979)
44 IBLA 272 (Dec. 26, 1979)

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44 IBLA 310 (Dec. 31, 1979)
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1744(a) ---------42 IBLA 144 (Aug. 16, 1979)
42 IBLA 296 (Aug. 27, 1979)
42 IBLA 139 (Aug. 16, 1979)
43 IBLA 10 (Sept. 11, 1979)
43 IBLA 250 (Oct. 10, 1979)
43 IBLA 302 (Oct. 17, 1979)
1744(a)(1) ------41 IBLA 115 (June 11, 1979)
42 IBLA 18 (July 25, 1979)
42 IBLA 292 (Aug. 27, 1979)
42 IBLA 338 (Aug. 30, 1979)
42 IBLA 391 (Sept. 11, 1979)
43 IBLA 1 (Sept. 11, 1979)
43 IBLA 182 (Sept. 28, 1979)
M-36910; 86 I.D. 89 (1979)
1744(a)(2) ------41 IBLA 115 (June 11, 1979)
41 IBLA 142 (June 14, 1979)
42 IBLA 18 (July 25, 1979)
42 IBLA 292 (Aug. 27, 1979)
42 IBLA 338 (Aug. 30, 1979)
42 IBLA 391 (Sept. 11, 1979)
43 IBLA 1 (Sept. 11, 1979)
1744(b) ---------33 IBLA 317 (Jan. 16, 1978)
33 IBLA 349 (Jan. 18, 1978)
35 IBLA 169 (May 22, 1978)
36 IBLA 379 (Aug. 31, 1978)
37 IBLA 13 (Sept. 8, 1978)
37 IBLA 88 (Sept. 22, 1978)
37 IBLA 120 (Oct. 3, 1978)
39 IBLA 32 (Jan. 15, 1979)
40 IBLA 88 (Mar. 22, 1979)
40 IBLA 212 (Apr. 10, 1979)
41 IBLA 115 (June 11, 1979)
41 IBLA 391 (July 24, 1979)
42 IBLA 91 (Aug. 13, 1979)
42 IBLA 288 (Aug. 27, 1979)
43 IBLA 84 (Sept. 19, 1979)
43 IBLA 119 (Sept. 24, 1979)
44 IBLA 44 (Nov. 19, 1979)
1744(c) ---------41 IBLA 115 (June 11, 1979)
41 IBLA 391 (July 24, 1979)
42 IBLA 18 (July 25, 1979)
42 IBLA 144 (Aug. 16, 1979)
42 IBLA 292 (Aug. 27, 1979)
42 IBLA 383 (Sept. 11, 1979)
42 IBLA 391 (Sept. 11, 1979)
43 IBLA 1 (Sept. 11, 1979)
43 IBLA 182 (Sept. 28, 1979)
43 IBLA 302 (Oct. 17, 1979)
44 IBLA 310 (Dec. 31, 1979)
1745 ------------42 IBLA 355 (Sept. 11, 1979)
1746 ------------ 3 ANCAB 273; 86 I.D. 397 (1979)
3 ANCAB 351; 86 I.D. 452 (1979)
3 ANCAB 377 (Sept. 21, 1979)
38 IBLA 175 (Dec. 6, 1978)
42 IBLA 355 (Sept. 11, 1979)
1751 ------------41 IBLA 354 (July 20, 1979)
1751(b)(1) ------41 IBLA 354 (July 20, 1979)
M-36914; 86 I.D. 553 (1979)
1751-1753 -------38 IBLA 327 (Dec. 19, 1978)
1752 ------------31 IBLA 377 (Aug. 8, 1977)
40 IBLA 129 (Mar. 28, 1979)
1752(a) ---------30 IBLA 277 (June 1, 1977)
39 IBLA 176 (Jan. 30, 1979)
39 IBLA 272; 86 I.D. 133 (1979)
1752(c) ---------32 IBLA 395 (Nov. 9, 1977)
33 IBLA 262 (Jan. 5, 1978)
40 IBLA 129 (Mar. 28, 1979)

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42 IBLA 26 (July 26, 1979)
43 IBLA 41; 86 I.D. 458 (1979)
1752(c)(2) ------43 IBLA 41; 86 I.D. 458 (1979)
1752(g) ---------30 IBLA 277 (June 1, 1977)
1761 ------------29 IBLA 57 (Feb. 16, 1977)
31 IBLA 367 (Aug. 1, 1977)
33 IBLA 7 (Nov. 7, 1977)
38 IBLA 80 (Nov. 9, 1978)
40 IBLA 180 (Apr. 3, 1979)
44 IBLA 275 (Dec. 26, 1979)
M-36900; 86 I.D. 293 (1979)
1761 et seq. ----32 IBLA 317 (Sept. 30, 1977)
M-36900; 86 I.D. 293 (1979)
1761(a)(6) ------40 IBLA 209 (Apr. 10, 1979)
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ACCOUNTS
(*See also* Funds--if included in this Index.)

GENERALLY

Land withdrawn for reclamation purposes in Imperial County, Calif., within the California Desert Conservation Area and administered by BLM under a memorandum of understanding with the Bureau of Reclamation should be regarded as "entitlement lands" in the computation of payments to be made to the county under the Act of Oct. 20, 1976, 31 U.S.C. § 1602 (1976).

County of Imperial, 40 IBLA 257 (Apr. 16, 1979)

FEES AND COMMISSIONS

"Rural Electrification Administration projects." A right-of-way holder is not excused from payment of rental under 43 CFR 2802.1-7(c), by virtue of holding an REA loan, where such holder is neither a cooperative or nonprofit organization.

Continental Telephone of the West, 35 IBLA 279 (June 2, 1978)
85 I.D. 186

PAYMENTS

Where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously filed offers and the lessee's personal check in payment of the first year's rental is returned by the drawee bank because of uncollected funds, a decision canceling the lease will be affirmed; and the fact that the bank, after consultation with its depositor indicated that it would honor the check upon resubmission will not serve to avoid the lease cancellation where no bank error is shown.

Dale A. Spiegel, 19 IBLA 235 (Mar. 26, 1975)

Reasonable transportation costs of production from oil and gas leases from the field to the first available market are allocable to the Federal or Indian royalty interest.

Kerr-McGee Corp., 22 IBLA 124 (Sept. 26, 1975)

Appellant's submission with simultaneous oil and gas lease offer of a personal check to cover filing fees satisfied 43 CFR 3112.2-1(a)(1) despite drawee bank's subsequent refusal to honor that check, since the refusal is shown by evidence to be error on part of bank alone.

Hugh Burnett, 28 IBLA 303 (Jan. 10, 1977)

The authorized officer may not deem an oil and gas rental payment to have been timely filed, pursuant to 43 CFR 1821.2-2(g) if it is received at the State Office when it is not open to the public, even though the payment is presented on the last day in which payment can be made. Such payment is deemed to have been made on the day and hour the office is next open to business, as provided in 43 CFR 1821.2-2(d).

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental on time as required by sec. 31 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 188(b) (1970), where 20 minutes before the State Office closes to the public on the last day on which rental can be paid, petitioner instructs by telephone an agent who lives in the vicinity of the State Office to make the payment and the agent who alleges she was delayed by traffic and security measures makes payment after the office is closed to the public. In such circumstances the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Bob Burch, 32 IBLA 93 (Sept. 12, 1977)

Where cattle are admitted to an allotment at the beginning of the usual grazing season but prior to the issuance of a license for that season, and payment is later made by a check which recites that it is "payment in full for 1975 grazing fee," the Bureau of Land Management may properly deposit the check, allotting part of the proceeds for the grazing license for the rest of the season, and deposit the remainder of the proceeds in a suspense account pending resolution of the trespass. Such action indicates that the check was not accepted in settlement of the trespass damages, and cashing the check does not constitute an accord and satisfaction of the trespass damages.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977)
84 I.D. 475

The provision in 43 CFR 3825.1(b) that failure to pay annual rental on or before the anniversary date of a mining claim located in the Papago Indian Reservation "shall be deemed sufficient grounds for invalidating the claim" is directory, not mandatory. Where the mining claimant does not pay rental for 2 years on two claims and is 1-1/2 years late on other claims, and where he has not paid the rental prior to receiving decisions from the Bureau of Land Management holding the claims invalid, the mining claims must be held invalid.

Louis D. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

The timeliness of filing Federal tax returns and payments and of making rental payments for Federal oil and gas leases are governed by different statutes and regulations and are not the same. Receipt in the proper Bureau of Land Management office determines the timeliness of rental payment, whereas the Internal Revenue Service uses a postmark date. The postmark date is relevant in considering a Federal oil and gas lease rental only to determine if the lessee exercised reasonable diligence so as to warrant reinstatement of a lease terminated for failure to pay the rental timely.

David R. Smith and Darla L. Smith, 33 IBLA 63 (Dec. 5, 1977)

Rental payment which arrives at a BLM State Office after normal business hours, as set out in 43 CFR 1821-1(a) and (d), is properly recorded by BLM as received at 10 a.m. the next business day, *per* 43 CFR 1821.2-2(d).

Robert L. Wheeler, 33 IBLA 371 (Jan. 23, 1978)

Payment of the annual rental on an oil and gas lease is not made until a proper form of remittance is received by the appropriate office of the Bureau of Land Management.

Lloyd M. and Adelheid A. Patterson, 34 IBLA 68 (Feb. 22, 1978)

A check tendered prior to the due date of an oil and gas lease annual rental payment, which is properly dishonored by the drawee bank, does not constitute timely payment. But where return of the check results from a confirmed bank error, subsequent collection and payment of the check relates back to the time of the original tender, and payment is timely.

Annual rental payments on oil and gas leases are sent to depositories designated by the Secretary of the Treasury if their location permits the deposit to be hand carried; otherwise, the deposits are mailed to the Denver Branch of the Kansas City Federal Reserve Bank. Washington, D.C., offices of the Bureau of Land Management may send deposits to the Cash Division of the Treasury Department. All checks drawn on foreign banks or foreign branches of United States banks must be sent for deposit to the Cash Division of the Treasury Department.

An oil and gas lease rental payment check returned to the Bureau of Land Management because a Federal Reserve Bank will not accept for collection checks drawn on foreign banks, but which could be collected through the Cash Division of the Treasury Department and would be honored by the drawee bank, is not "uncollectible."

Pipeline Petroleum Corp., 34 IBLA 73 (Feb. 22, 1978)
85 I.D. 70

"Payment." Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering his leases, and, until such time as it is received, no "payment" of annual rental has occurred. Accordingly, where a check is mailed prior to the due date but does not arrive until more than 20 days after this due date, no "payment" was made prior to that time, so that the lease automatically terminated by operation of law, and the Department is without authority to consider a petition for reinstatement of the lease.

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental, within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when he submits payment to the BLM office administering his leases, and when BLM has the opportunity either to receive or decline it. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for reinstatement of an oil and gas lease terminated for failure to make timely payment of annual rental.

Mobil Oil Corp., 35 IBLA 265 (June 2, 1978)

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but are only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Interest may be imposed on use charges for right-of-way sites depending on considerations of fairness and equity. In the absence of contrary directives, interest may be imposed for occupancy of a site where use charges should have been imposed at the same rate as past permitted use. Also, interest may be imposed on

increased charges due on an annual basis for the years prior to payment of such amount.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

The holder of a mining claim located within the Papago Indian Reservation under sec. 3 of the Act of June 18, 1934, 48 Stat. 984 (repealed, Act of May 27, 1955, 69 Stat. 67), is required to make the annual rental payment for the claim in advance (on or before the anniversary date of location of the claim). A decision invalidating a claim will be upheld where proceedings to void the claim are not initiated until several months after the rental due date, there is no evidence the rent was paid for the year, and appellant admits the failure to pay was an oversight.

John A. Cooley, 36 IBLA 245 (Aug. 14, 1978)

A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law and not by the action of any official if the annual rental is not paid on or before the due date. Submission of a rental check without identifying the lease number precluded the Bureau of Land Management from accepting the check as payment for the lease, and a lease is properly held to terminate in the absence of a timely identified payment of the rental.

S. Delos Champaign, 37 IBLA 377 (Nov. 6, 1978)

"Payment." A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the due date. A check for rental does not constitute payment until it is received at the proper office.

Gretchen Capital, Ltd., 37 IBLA 392 (Nov. 8, 1978)

"Reasonable diligence." Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the Bureau of Land Management and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. § 188(c) (1976) because there has been reasonable diligence on the part of lessee.

Lillie Belle Higgins, 38 IBLA 254 (Dec. 8, 1978)

Where checks submitted in payment of annual rental on oil and gas leases are returned by the drawee bank as uncollectible because they are postdated, and there has been no bank error, no tender or payment of annual rental has been made. In the absence of any other payment prior to the anniversary date, the leases terminate automatically by operation of law.

An oil and gas lessee who submits payment of annual rentals with checks postdated by 15 days is not reasonably diligent in attempting to make payment thereof. So doing with the expectation that negotiation of the checks will not be delayed past the anniversary date unreasonably anticipates either that BLM will withhold processing the checks until they become valid or that the drawee bank will honor them despite the postdating.

Benjamin T. Franklin, 38 IBLA 291 (Dec. 14, 1978)

ACCOUNTS--Continued

PAYMENTS--Continued

Where an offer is drawn No. 1 for a tract consisting of 39.97 acres, BLM requests payment specifically of $40 advance rental, and the offeror remits $39.97 within the 15-day period spelled out in 43 CFR 3112.4-1, the submittal of $39.97 does not constitute satisfactory payment within the ambit of that regulation.

Milton Knoll, 38 IBLA 319 (Dec. 19, 1978)

BLM does not waive its right to declare a lease expired by cashing an advance annual rental check and placing funds in an unearned account.

Richard P. Smoot, 39 IBLA 1 (Jan. 8, 1979)

It is proper for the Bureau of Land Management to refuse to accept a filing fee check accompanying drawing entry cards for simultaneous oil and gas lease offers where the check bears the figure amount of $110, the correct amount due, and the typewritten amount of "One hundred eleven and no/100."

Bertram F. Rudolph, Jr., 39 IBLA 167 (Jan. 30, 1979)

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but may be only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Interest may be imposed on use charges for right-of-way sites depending on considerations of fairness and equity. In the absence of contrary directives, interest may be imposed for occupancy of a site where use charges should have been imposed at the same rate as past permitted use. Also, interest may be imposed on increased charges for the period commencing with the date from which increased charges are established.

Donald R. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

Where a lease under the Recreation and Public Purposes Act, as amended, 43 U.S.C. § 869 (1976), erroneously states the 1-year rental as being the rental for 5 years, and the lessee knew or had reason to know of the error, the error is a unilateral mistake, and the lease may be properly corrected to show the true rental, or the lease may be rescinded if appellant does not desire to be bound by the reformed agreement.

St. Scholastica Academy, 40 IBLA 175 (Apr. 3, 1979)

Land withdrawn for reclamation purposes in Imperial County, Calif., within the California Desert Conservation Area and administered by BLM under a memorandum of understanding with the Bureau of Reclamation should be regarded as "entitlement lands" in the computation of payments to be made to the county under the Act of Oct. 20, 1976, 31 U.S.C. § 1602 (1976).

County of Imperial, 40 IBLA 257 (Apr. 16, 1979)

ACCOUNTS--Continued

PAYMENTS--Continued

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is $1,955, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for $1,954 within the time required, but fails to submit the $1 deficiency within the allowed time.

C. Panos, 42 IBLA 326 (Aug. 30, 1979)

Timely tender of a check which, when presented, is dishonored properly by the bank on which it is drawn does not constitute timely payment.

Caroline L. Hunt, 43 IBLA 314 (Oct. 22, 1979)

A check is a valid form of remittance for payment of an oil and gas lease filing fee and advance rental. However, it is subject to collection and final payment without cost to the Government. Where a check is returned from a bank as uncollectible, generally, the check cannot be considered as a proper tender of payment.

A check returned from a bank may be considered a tender of payment where the return of the check is shown to have resulted from a confirmed bank error, and the subsequent collection and payment of the check relates back to the time it was originally tendered to BLM. If an oil and gas lease has been canceled and applications rejected because checks have been returned from a bank and the appellant shows bank error, the case is remanded for further consideration.

Jose V. Lim, 44 IBLA 96 (Nov. 20, 1979)

REFUNDS

Where a noncompetitive oil and gas lease is canceled for failure of the lessee to make full payment of the first year's rental, the Department may return the rental pursuant to the repayment statute, 43 U.S.C. § 1374 (1970), in appropriate circumstances where the lessee has derived no benefit from the possession of the lease and there are no other factors militating against repayment.

Albert J. Piper, 27 IBLA 61 (Sept. 27, 1976)

Where a noncompetitive oil and gas lease is canceled for having been erroneously issued because the lands involved were part of an incorporated city (43 CFR 3101.1-1(a)(3) the Department may return the rentals pursuant to the repayment statute, 43 U.S.C. § 1374 (1970), in appropriate circumstances where the lessees have derived no benefit from the possession of the lease and there are no other factors militating against repayment.

Bruce Anderson, 30 IBLA 118 (May 2, 1977)

A simultaneous oil and gas lease drawing entry card containing an incorrect parcel number is properly rejected and the filing fee is properly retained by the Bureau of Land Management.

Henry A. Alker, 34 IBLA 136 (Mar. 8, 1978)

ACCOUNTS--Continued

REFUNDS--Continued

Failure to execute a lease results in forfeiture of the bid deposit by the high bidder in a competitive oil and gas lease sale.

Bernard P. Gencorelli, 43 IBLA 7 (Sept. 11, 1979)

A simultaneous oil and gas lease drawing entry card omitting the State and zip code from the offeror's address is properly rejected and the filing fee is properly retained by the Bureau of Land Management.

Robert C. Meredith, 44 IBLA 213 (Dec. 11, 1979)

ACCRETION

Where one who protests the performance and acceptance of a survey of land, identified by the cadastral engineer making the survey as public domain land, offers probative evidence that changes arose because of avulsion rather than accretion and so the land is not in fact federally owned, a hearing will be ordered to receive and consider such evidence and to ascertain the facts.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

Submerged and filled tidelands passed to the State of Alaska on the date of its admission to the Union, Jan. 3, 1959. Ownership of tidelands subsequently created by avulsive action remains in those persons or entities, including the Federal Government, who held title to the land prior to the avulsive action.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

Unsurveyed fast lands, formed by accretion to public land or to lands patented with an oil and gas reservation, riparian to a navigable river and lying within the meander lines of that navigable river, as recorded on the official plat, may be leased provided that a proper offer is received and the other relevant conditions precedent to leasing are met.

Federal law determines the legal characterization of accretions, avulsions, and relictions to land riparian to navigable bodies of water, where title to the land or reserved interests in the land remains in the United States.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

ACQUIRED LANDS

An offer for an oil and gas lease under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

Shell Oil Co., 20 IBLA 292 (May 27, 1975)

ACQUIRED LANDS--Continued

Patented lands which are subsequently acquired by the United States are not, by mere force of reacquisition, open to disposal under the public land laws. In the absence of specific statutory direction to the contrary, the acquired land is not subject to location under the mining laws.

J. C. Babcock, J. G. Shipp, 25 IBLA 316 (June 30, 1976)

Patented lands which are subsequently acquired by the United States for the National Park Service are not, by mere force of acquisition, open to disposal under the public land laws. In the absence of specific statutory direction to the contrary, the acquired land is not subject to location under the mining laws. 30 U.S.C. § 22 (1970).

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

The Mineral Leasing Act for Acquired Lands does not exclude from oil and gas leasing those lands underlying the Missouri River within the boundaries of the Fort Berthold Indian Reservation as established by the Treaty of Fort Laramie (1851) and the Executive Order of Apr. 12, 1870, which were reacquired by the United States from the Indian tribes. The exclusion in the Act for submerged lands refers to submerged coastal lands, as set forth in 43 CFR 3101.2-1(g).

Impel Energy Corp., 42 IBLA 105 (Aug. 16, 1979)

Lands which were acquired for development of their uranium deposits are not subject to oil and gas leasing under the Mineral Leasing Act for Acquired Lands.

Esdras K. Hartley, 44 IBLA 66 (Nov. 20, 1979)

ACT OF APRIL 24, 1820

The Secretary of the Interior does not have authority under the Right-of-Way Oil and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 et seq. (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the mineral estate was included within the grant to the patentee.

Amerada Hess Corp., 24 IBLA 360 (Apr. 27, 1976)
83 I.D. 194

ACT OF JUNE 30, 1834

Appellant's contention that under sec. 22 of the Act of June 30, 1834, 4 Stat. 729, 733 (25 U.S.C. § 194 (1976)), the burden of proof cannot be assigned to the tribe is without merit. The issue framed by appellant does not align "Indians" against "whites." The primary relief sought by the tribe is the cancellation of trust patents which can only be held by Indians.

Administrative Appeal of Oglala Sioux Tribe v. Commissioner of Indian Affairs and Richard Tall (PRU-10542), 7 IBIA 188 (Sept. 5, 1979) 86 I.D. 425

ACT OF FEBRUARY 8, 1887

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated * * *." Pending final action on the matter, public lands are not open to Indian allotment settlement and disposition following the filing and noting of an application by the Bureau of Land Management for a proposed withdrawal; regulation 43 CFR 2091.2-5(a) provides that the noting of an application for withdrawal on the official plats maintained in the proper land office shall temporarily segregate the subject land from settlement under the public land laws to the extent that the withdrawal applied for, if effected, would prevent such forms of disposal. Following issuance of a public land order withdrawing the subject land, Indian allotment applications previously held in a suspense status are properly rejected.

Thurman Banks et al., 22 IBLA 205 (Oct. 15, 1975)

ACT OF MARCH 3, 1887

Sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), authorizes, rather than mandates, the issuance of patents to innocent purchasers for value of lands which did not pass to a railroad under a statutory grant because of their mineral character, the rights of any such innocent purchaser being dependent upon the conditions and limitations of the Act of Mar. 3, 1887, 43 U.S.C. § 898 (1970).

Southern Pacific Transportation Co., Donald K. Lee, Charles Siller v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

ACT OF MARCH 2, 1889

Assuming, in the light most favorable to appellant, that the allotments at issue were subject to the final *proviso* of sec. 9 of the Act of Mar. 2, 1889, 25 Stat. 888, 891, we find no language in this or other sections of the Act evidencing an intention on the part of Congress that allotments--to be valid--required approval by the Oglala Sioux Tribe.

Administrative Appeal of Oglala Sioux Tribe v. Commissioner of Indian Affairs and Richard Tall (PRU-10542), 7 IBIA 188 (Sept. 5, 1979) 86 I.D. 425

ACT OF MARCH 3, 1891

Sec. 7 of the Act of Mar. 3, 1891, provides that no person or association of persons shall hold by assignment or otherwise, prior to the issue of patent, more than 320 acres of arid or desert lands; the terms "hold," "assignment" and "otherwise" are words of broad significance and will be defined in such manner to effectuate the purposes of the Act, to wit, to prevent anyone from holding more than 320 acres of desert lands to the exclusion of bona fide settlers or the entrymen of record.

Any person or association of persons who controls, possesses and receives substantial benefits from desert lands will be regarded as "holding" such lands within the meaning of the Act of Mar. 3, 1891.

United States v. Golden Grigg et al., 19 IBLA 379 (Apr. 7, 1975) 82 I.D. 123

ACT OF MARCH 3, 1891--Continued

An entryman may not take advantage of sec. 7 of the Act of Mar. 3, 1891, entitling an entryman to a patent after 2 years from date of issuance of a receiver's receipt when there is no pending contest or protest against the validity of the entry, where he has not shown that preconditions of the Act have been met, *i.e.*, making the final payments required.

United States v. Jack Zemmy Boyd, Jr., 39 IBLA 321 (Feb. 27, 1979)

ACT OF AUGUST 15, 1894

The Agreement of Dec. 4, 1893, between the Yuma (now Quechan) Indians and the United States, ratified in sec. 17 of the Act of Aug. 15, 1894, was an absolute, present cession of any and all interests of the Indians to the nonirrigable lands in the Fort Yuma Indian Reservation created by Executive Order of Jan. 9, 1884.

Assuming that the Act of Aug. 15, 1894, was a conditional rather than an absolute cession by the Yuma (now Quechan) Indians of their rights to the nonirrigable lands in the Fort Yuma Indian Reservation, all material conditions on the part of the United States were met, and the cession has occurred.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884. M-36886 (Jan. 18, 1977) 84 I.D. 1

The Agreement of Dec. 4, 1893, between the Yuma (now Quechan) Indians and the United States, ratified in the Act of Aug. 15, 1894 (28 Stat. 286, 332) provided for a conditional cession of the nonirrigable land of the Fort Yuma Reservation. The conditions which included allotment and sale of surplus irrigable land and the opening of nonirrigable lands to settlement and entry, did not occur during the decade following the agreement and ratifying statute.

Title to Certain Lands Within the Boundaries of the Fort Yuma (now called Quechan) Indian Reservation. M-36908 (Jan. 2, 1979) 86 I.D. 3

ACT OF AUGUST 18, 1894

An application filed by a State under the Act of Mar. 15, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act of 1894 must be rejected where the lands are withdrawn for stock-driveway purposes, and cannot be suspended pending consideration of a petition for reclassification of the lands as suitable for selection under the Carey Act.

A grant of lands to a State under the Carey Act of 1894 is not a grant *in praesenti*, vesting title to any particular lands as of the time of passage of the Act or by relation back upon fulfillment of the conditions imposed by the Act, but the allowance or rejection of an application by a State under the Act of Mar. 15, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act is a matter wholly within the discretion of the Department; and where the lands sought to be selected by the State are embraced within a stock-driveway withdrawal made by the Secretary of the Interior under authority of law, they are not, so long as such withdrawal remains in force, subject to any claim of the State under the Carey Act.

Idaho Department of Water Resources. 21 IBLA 210 (July 31, 1975)

In the absence of pertinent statutory directives or regulatory criteria mandating such action, it is improper for the Bureau of Land Management to reject applications filed by a State under the Act of Mar. 15, 1910, for temporary withdrawals of lands for proposed development under the Carey Act, on the basis of the Bureau's determination that the Carey Act does not permit acceptance of a temporary withdrawal application: (1) for the establishment of residence and settlement on noncontiguous tracts of land; (2) if the acreage applied for, when added to desert land entry acreage previously patented to the State's Carey Act project proposer, exceeds the maximum 320 acres permitted to be acquired by one person under 43 U.S.C. § 212 (1970); and (3) when the preliminary plan of development submitted by the State fails to provide adequate assurance of water transmission to the proposed project. Under these circumstances, the Bureau should suspend action on the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 24 IBLA 314 (Apr. 20, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed State application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a State under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a State under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

Applications filed for tenporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

The Bureau of Land Management should suspend consideration of the applications under the Carey Act pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

ACT OF JUNE 4, 1897

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

ACT OF JANUARY 31, 1901

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

ACT OF FEBRUARY 15, 1901

A Bureau of Land Management decision rejecting an application under the Act of Feb. 15, 1901, for a domestic water pipeline right-of-way will be sustained where it it was made in due regard for the public interest.

Hazel E. Kincaid, 25 IBLA 257 (June 23, 1976)

Pursuant to the Act of Feb. 15, 1901, repealed by sec. 706(a) of the Act of Oct. 21, 1976 (90 Stat. 2743, 2793), the Department had discretionary authority to permit the use of a right-of-way across public lands to supply water for domestic purposes; however, a right-of-way application for such use was properly rejected where approval of the grant would be contrary to the public interest.

Broken H. Ranch Co., 33 IBLA 386 (Jan. 26, 1978)

ACT OF FEBRUARY 15, 1901--Continued

The Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), was repealed by sec. 706 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2793, and any use or occupancy of public land granted subsequent to the effective date of FLPMA, Oct. 21, 1976, must be issued under authority of that Act. In authorizing the Secretary to grant rights-of-way, FLPMA provides that the Secretary shall require the applicant to submit certain information relating to the right-of-way, and a State Office notice enumerating such requirements is consistent with FLPMA.

William J. Colman, 40 IBLA 180 (Apr. 3, 1979)

ACT OF APRIL 21, 1904

Sec. 25 of the Act of Apr. 21, 1904, which authorized the application of the Reclamation Act of 1902 to the Yuma Indian Reservation, did not repeal by implication sec. 17 of the Act of Aug. 15, 1894, which provided for the cession, reclamation and allotment of the Reservation, and is in no way inconsistent with the 1894 Act.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

Sec. 25 of the Act of Apr. 21, 1904 (33 Stat. 189, 224), which authorized the application of the 1902 Reclamation Act to the Fort Yuma and Colorado River Reservations, and which provided for the allotment and sale of surplus irrigable lands on those reservations, was unrelated to and was not intended to effect the conditional cession provided for in the 1893 agreement and the 1894 ratifying statute.

Title to Certain Lands Within the Boundaries of the Fort Yuma (now called Quechan) Indian Reservation, M-36908 (Jan. 2, 1979) 86 I.D. 3

ACT OF APRIL 23, 1904

Sec. 8 of the Act of Apr. 23, 1904, 33 Stat. 302, providing for survey and allotment of lands within the Flathead Indian Reservation, excepts from mineral entry those lands classified as "timber land" by a Presidential Commission, and the Department of the Interior has no authority to overturn such classification and declare the "timber lands" more valuable as "mineral lands."

Montana Copper King Mining Co. et al., 20 IBLA 30 (Apr. 16, 1975)

ACT OF MARCH 15, 1910

An application filed by a State under the Act of Mar. 15, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act of 1894 must be rejected where the lands are withdrawn for stock-driveway purposes, and cannot be suspended pending consideration of a petition for reclassification of the lands as suitable for selection under the Carey Act.

A grant of lands to a State under the Carey Act of 1894 is not a grant *in praesenti*, vesting title to any particular lands as of the time of passage of the Act or by relation back upon fulfillment of the conditions imposed by the Act, but the allowance or rejection of an application by a State under the Act of Mar. 15, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act is a matter wholly within the discretion of the Department; and where the lands sought to be selected by the State are embraced within a stock-driveway withdrawal made by the Secretary of the Interior under authority of law, they are not, so long as such withdrawal remains in force, subject to any claim of the State under the Carey Act.

Idaho Department of Water Resources, 21 IBLA 210 (July 31, 1975)

In the absence of pertinent statutory directives or regulatory criteria mandating such action, it is improper for the Bureau of Land Management to reject applications filed by a State under the Act of Mar. 15, 1910, for temporary withdrawals of lands for proposed development under the Carey Act, on the basis of the Bureau's determination that the Carey Act does not permit acceptance of a temporary withdrawal application: (1) for the establishment of residence and settlement on noncontiguous tracts of land; (2) if the acreage applied for, when added to desert land entry acreage previously patented to the State's Carey Act project proposer, exceeds the maximum 320 acres permitted to be acquired by one person under 43 U.S.C. § 212 (1970); and (3) when the preliminary plan of development submitted by the State fails to provide adequate assurance of water transmission to the proposed project. Under these circumstances, the Bureau should suspend action on the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 24 IBLA 314 (Apr. 20, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed State application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a State under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

ACT OF MARCH 15, 1910--Continued

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a State under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

ACT OF JUNE 25, 1910

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, *as amended*, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

ACT OF JULY 22, 1912

A decision holding that a tract of land has reverted to the United States must be affirmed where the land was patented to a municipality under authority of a special statute which expressly provided that the town shall not have the right to sell or convey any part thereof and that if the land shall not be used as public park it shall revert to the United States, and where the record shows that the municipality conveyed two small parcels to the State and has never used the remainder for park purposes in the intervening 60 years since the patent issued.

City of Okanogan, Washington, State of Washington, 41 IBLA 98 (June 4, 1979)

ACT OF DECEMBER 29, 1916

A bond filed by a mining claim owner, covering lands patented under the Stock-Raising Homestead Act of Dec. 29, 1916, *as amended*, 43 U.S.C. §§ 291-301 (1970), need only be set in an amount to cover damages to crops, improvements, and the value of the land for grazing purposes within the limits of the mining claim. The *ad damnum* of the bond does not have to be sufficient to cover damages caused by a disruption of the surface owner's entire grazing operation.

Where surface owners object to the amount of a bond, submitted to the Bureau of Land Management under sec. 9 of the Stock-Raising Homestead Act of Dec. 29, 1916, *as amended*, 43 U.S.C. § 299 (1970), as being inadequate in amount, request a hearing thereon, but fail to tender any evidence which would impel the conclusion that a hearing is likely to be productive and meaningful, the request for a hearing is properly denied.

The owner of a patented stock-raising homestead, in which the minerals have been reserved to the United States under the Act of Dec. 29, 1916, *as amended*, has a sufficient adverse interest under 43 CFR 4.450-1, to initiate a contest against a mining claimant, alleging lack of discovery of valuable minerals.

The issue of whether a mining claim has been perfected by discovery of available mineral has no place in a proceeding to determine whether the amount of a stock-raising homestead bond is sufficient.

Elmer Silvera et al., 42 IBLA 11 (July 25, 1979)

ACT OF JUNE 10, 1920

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Land reserved for a reservoir site by executive order under authority of the Pickett Act of June 25, 1910, to conserve water for irrigation purposes, remained open to the location of mining claims for metalliferous minerals, and the provisions of the Federal Power Act of June 10, 1920, would not operate to bar the location of such claims unless and until a powersite classification was subsequently imposed.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

ACT OF FEBRUARY 25, 1925

"An Act granting public lands to the town of Silverton, Colorado, for public park purposes" (43 Stat. 980, Feb. 25, 1925).

The above Act and the patent issued in accordance therewith require that the lands granted be used for public park purposes only, and the town's attempt to lease a portion of the lands for the construction of camper sites does not violate the Act and patent since the use of a limited part of the patented land for camper sites is consistent with recreational and public park purposes.

Town of Silverton, 35 IBLA 183 (May 23, 1978)
85 I.D. 140

ACT OF JUNE 14, 1926

Where a patent has been issued under the Recreation and Public Purposes Act of June 14, 1926, *as amended*, 43 U.S.C. § 869 *et seq*. (1970), pursuant to a plan of development, and that plan is modified with the consent of the Bureau of Land Management, the failure to comply with the original plan is excused.

H. B. Baldwin, 37 IBLA 215 (Oct. 12, 1978)

ACT OF JANUARY 25, 1927

Where, after Statehood, a designated school section is surveyed and returned as mineral land (coal) known to be mineral in character prior to the date when the rights of the State would have attached, and where prior to the Act of Jan. 25, 1927 (44 Stat. 1026), the land is withdrawn for national forest purposes, title to the section did not pass to the State.

Malcolm H. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

ACT OF MARCH 4, 1927

Under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq*. (1970), issuance of a grazing lease appropriates the lands and segregates them from public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from lease.

Edward F. Naughton, 23 IBLA 134 (Dec. 23, 1975)

A grazing lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq*. (1970), appropriates the lands and segregates them from the public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from the lease.

Herman Anderson, Jr., Nicholas Pestrikoff, Anthony Drabek, 41 IBLA 296 (June 29, 1979)

ACT OF MAY 21, 1930

An oil and gas lease offer for lands in a reservoir right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1970), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

Republic Oil & Mining Co. and Margaret V. Coombs, 35 IBLA 212 (May 26, 1978)

Oil and gas under a reservoir right-of-way may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq*. (1970), but may only be leased to the holder of the right-of-way, his assignee, or to adjacent owners or their lessees in accordance with the Act of May 21, 1930, 30 U.S.C. § 301 (1970); therefore, offers filed under the Mineral Leasing Act for such lands are properly rejected.

Alice Mays, 36 IBLA 313 (Aug. 23, 1978)

ACT OF APRIL 23, 1932

The rejection of an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), to open lands in a reclamation withdrawal to mineral location will be affirmed when the applicant fails to submit facts to show the basis for his knowledge or belief that the lands contain valuable mineral deposits. Merely to state the lands contain such deposits is not sufficient.

Joe Ashburn, 27 IBLA 227 (Oct. 12, 1976)

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

ACT OF JUNE 18, 1934

The provision in 43 CFR 3825.1(b) that failure to pay annual rental on or before the anniversary date of a mining claim located in the Papago Indian Reservation "shall be deemed sufficient grounds for invalidating the claim" is directory, not mandatory. Where the mining claimant does not pay rental for 2 years on two claims and is 1-1/2 years late on other claims, and where he has not paid the rental prior to receiving decisions from the Bureau of Land Management holding the claims invalid, the mining claims must be held invalid.

When a mining claim located in the Papago Indian Reservation is declared invalid for failure to pay annual rental timely, and that fact is not disputed, a hearing is not required as there are no issues of fact involved but only of law.

Louis D. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

The holder of a mining claim located within the Papago Indian Reservation under sec. 3 of the Act of June 18, 1934, 48 Stat. 984 (repealed, Act of May 27, 1955, 69 Stat. 67), is required to make the annual rental payment for the claim in advance (on or before the anniversary date of location of the claim). A decision invalidating a claim will be upheld where proceedings to void the claim are not initiated until several months after the rental due date, there is no evidence the rent was paid for the year, and appellant admits the failure to pay was an oversight.

John A. Cooley, 36 IBLA 245 (Aug. 14, 1978)

The collection of a yearly rental pursuant to the provisions of 43 CFR 3825.1(b) for a mining claim situated within the Papago Indian Reservation in no way presages the existence of a valid mining claim based on the discovery of a valuable mineral deposit.

United States v. J. D. Wilson, 44 IBLA 1 (Nov. 6, 1979)

ACT OF SEPTEMBER 18, 1940

Where the purchaser from the railroad of unpatented land believed at the time of his purchase that the land was mineral, and there was physical evidence of its mineral character, or if conditions were such that the purchaser should have known then that the land was excepted from the grant to the railroad, he was not a purchaser in good faith within the "innocent purchaser" proviso of sec. 321(b) of the Transportation Act of 1940.

Southern Pacific Transportation Co., Jay R. Fogal; Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976)
83 I.D. 1

ACT OF AUGUST 13, 1949

Lands which have been designated by the Act of Aug. 13, 1949, as public domain are not leasable under the Mineral Leasing Act for Acquired Lands or Reorganization Plan No. 3 of 1946, even though they may have been acquired lands prior to the Act of Aug. 13, 1949. A prospecting permit for uranium on such lands will be denied.

John R. Meadows, 30 IBLA 14 (Apr. 4, 1977)

ACT OF AUGUST 12, 1953

Lands which were subject to an oil and gas lease offer on Sept. 20, 1951, were not open to mineral location, and mining claims located on such lands on this date are properly declared null and void in the absence of compliance with the redemption provisions of the Act of Aug. 12, 1953, and the Multiple Mineral Development Act, requiring filing of an amended notice of location prior to Dec. 10, 1953, in the place and manner in which the original notice was of record.

A mining claimant's failure to comply with the redemption provision of the Act of Aug. 12, 1953, and the Multiple Mineral Development Act is not excused because BLM failed to notify her of the availability of this provision.

Dorothy Smith, 39 IBLA 306 (Feb. 23, 1979)

ACT OF AUGUST 15, 1953

Public Law 280, 67 Stat. 588-90, did not grant to States general civil regulatory powers over Indian reservations. Nor could this be accomplished by Departmental regulation, Secretarial Order or other directive.

Administrative Appeal of the Morongo Band of Mission Indians v. Area Director, Sacramento Area Office,
7 IBIA 299 (Dec. 13, 1979) 86 I.D. 680

ACT OF AUGUST 11, 1955

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

ACT OF JULY 7, 1958

The filing of a State selection application under sec. 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, 48 U.S.C. notes prec. § 21 (1970), does not create a right that prevents a Native Village from selecting those lands under the provisions of the Alaska Native Claims Settlement Act of Dec. 18, 1971, 85 Stat. 688, 43 U.S.C. §§ 1601-1624 (Supp. III 1973).

State of Alaska, 19 IBLA 316 (Apr. 7, 1975)

ACT OF JULY 6, 1960

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 238 (June 28, 1976)

ACT OF OCTOBER 8, 1964

Where the holder of mineral leases in the Lake Mead National Recreation Area fails to mine and produce minerals within the time prescribed by the lease for reasons not beyond the control of the lessee, the leases are not in good standing and therefore are not subject to renewal.

It is a proper exercise of discretion to refuse to renew mineral leases in the Lake Mead National Recreation Area where the lessee failed to commence mining and produce minerals as required by regulation and by the terms of the lease for reasons which were attributable to the lessee.

Apache Oro Co., 22 IBLA 331 (Nov. 11, 1975)

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Minerals which are subject to location under the general mining law on public land outside the Lake Mead Recreation Area are subject to the leasing provisions of the Act of Oct. 8, 1964, within the Recreation Area. But, minerals which are disposable by sale under the 1947 Materials Act when situated outside the Recreation Area are also subject to such disposal within it.

A decision to reject an application for a mineral lease within the Lake Mead Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to environmental protection.

Bilite Aggregate Co., 26 IBLA 197 (Aug. 11, 1976)

Where the State Office, following a recommendation of the National Park Service rejects an application for an oil and gas lease in the Lake Mead National Recreation Area on the basis of a general environmental review of the consequences of oil and gas leasing in the Recreation Area, but which does not specifically show that the lands involved are of a particular value in the Recreation Area as a whole and that leasing subject to stipulations will not suffice to protect the recreation and other values of the land, the case will be remanded for

ACT OF OCTOBER 8, 1964--Continued

a particular application of the environmental review to that land.

Robert R. Wahl, Howard Yee, 28 IBLA 305 (Jan. 13, 1977)

Where, at the end of its term, a mineral lease affecting lands within the Lake Mead Recreation Area is not in good standing, an application for renewal thereof for an additional 5 years is properly denied. Where the lessee fails to develop the lease property diligently during the term of the lease and does not fall within an exception to this requirement, the lease is not in good standing and may not be extended.

Audrine G. Knight, 36 IBLA 53 (June 30, 1978)

Where the State Office, following recommendations of the National Park Service, rejects applications for oil and gas leases under the "excepted areas" provisions of 43 CFR 3111.1-3(e)(4), and where it appears that large portions of the applied-for lands do not fall within such areas, the case will be remanded with instructions to reconsider whether the leasing of lands not in excepted areas would be appropriate.

D. L. Percell, 37 IBLA 272 (Oct. 20, 1978)

D. L. Percell, 40 IBLA 126 (Mar. 28, 1979)

ACT OF OCTOBER 22, 1965

Title I of the Highway Beautification Act, 79 Stat. 1028, which applies to all "public lands or reservations of the United States," does not apply to Indian reservations.

California's Outdoor Advertising Act, implementing the Highway Beautification Act, 79 Stat. 1028, may not be applied to non-Indian lessees on the Morongo Indian Reservation.

The Department's policy established in 1965 of requiring lessees of Indian lands in California to comply with State standards regulating land use and development can be achieved without subjecting developing tribal governments to the full enforcement powers of the State, viz., through adding appropriate State standards to the provisions of any lease.

Administrative Appeal of the Morongo Band of Mission Indians v. Area Director, Sacramento Area Office, 7 IBIA 299 (Dec. 13, 1979) 86 I.D. 680

ACT OF OCTOBER 15, 1966

The grant of a right-of-way to cross Federal land for a proposed pipeline which is neither Federally authorized nor funded is an "undertaking" within the meaning of the National Historic Preservation Act, *as amended*, 80 Stat. 915, 16 U.S.C. § 470 *et seq*. (1976). However, construction of segments of the pipeline which do not cross Federal land, and which are neither Federally licensed nor funded, is not an "undertaking" under that Act, and the provisions of that Act do not apply to such segments.

Western Slope Gas Co., 40 IBLA 280 (Apr. 18, 1979)

ACT OF SEPTEMBER 26, 1968

An application to purchase public land filed pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), is properly rejected when the Geological Survey reports that such lands are underlain with coal, and that exercise of surface rights would unreasonably interfere with operations under the Mineral Leasing Act of 1920. In addition, the public interest dictates rejection of the application because conveyance of the surface rights could allow the surface owner, pursuant to the Surface Mining Control and Reclamation Act of 1977, to prevent strip mining of the underlying coal by withholding his consent to mine.

A determination by the United States Geological Survey that certain lands in an application for sale under the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), are underlain with coal, and that sale of the surface rights would interfere with the operation of the Mineral Leasing Act of 1920, will not be disturbed in the absence of a clear showing by the applicant that the determination was improperly made.

Mace Cox, 38 IBLA 340 (Dec. 20, 1978)

Where an applicant under the Unintentional Trespass Act, 43 U.S.C. § 1431 (1976), had mistakenly described the land being sought, the application may not be amended after Sept. 25, 1971, to conform the land description to the land actually in trespass.

DeRalph S. Bunting, 41 IBLA 13 (May 22, 1979)

ACT OF DECEMBER 24, 1970

Sec. 4 of Geothermal Steam Act of 1970 authorizes competitive bidding as sole basis for issuance of geothermal leases for lands determined to be within a KGRA.

Sec. 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during Jan. 1974 filing period, and State Office rejections of appellant's Jan. 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 18 IBLA 393 (Feb. 7, 1975) 82 I.D. 60

Sec. 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during Jan. 1974 filing period, and State Office rejections of appellant's Jan. 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 19 IBLA 136 (Mar. 6, 1975)

ACT OF DECEMBER 24, 1970--Continued

Sec. 4 of the Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands within a known geothermal resource area under regulations formulated by the Secretary of the Interior. Where the Department has promulgated regulations pursuant to this section which provides the Secretary's authorized officer with the reserved right to reject any and all bids submitted for a competitive geothermal lease sale, and that reserved right is publicized in the sale notice, the Government is not obligated to accept any bid which might be considered inadequate.

Getty Oil Co., 27 IBLA 269 (Oct. 26, 1976)

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-03 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

On appeal from a determination of United States Geological Survey under 30 U.S.C. §§ 1002-03 (1976), rejecting offeror's competitive geothermal lease bid as too low, offeror has the burden of showing that the rejection is arbitrary and capricious and that Survey has no rational basis for rejection of the bid.

While the Department has discretion as to whether to grant a hearing to an offeror whose high bid is rejected for a competitive geothermal lease, a hearing is not in the public interest where offeror has not explained a procedure in which particular facts could be effectively utilized in an alternative formula for computing minimum bids.

Union Oil Co., 38 IBLA 3 3 (Dec. 29, 1978)

ACT OF DECEMBER 31, 1970

The Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a (1970), does not require the granting of permission for placer mining operations on land within a powersite withdrawal where such operations would probably interfere with other uses of the land.

United States v. Edward J. Connolly, Jr., Idaho Fish and Game Department (Intervenor), 40 IBLA 30 (Mar. 15, 1979)

ACT OF DECEMBER 15, 1971

A district manager's decision denying a grazing permit for 10 domestic horses, based on the fact that such a denial was required for proper range management and for protection of wild horses under the Wild Free-Roaming Horses and Burros Act, 85 Stat. 649-651, will be overruled where evidence presented at a hearing shows that granting the permit will not interfere with BLM's management of the wild horses under the Act.

Chester Baker, 26 IBLA 257 (Aug. 18, 1976)

Where claimants have filed claims to horses on the public lands under sec. 5 of the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1335 (Supp. IV 1974), and pursuant to the regulations in 43 CFR Subpart 4713, and failed to recover them within a reasonable period of time as provided in gathering authorizations issued by the Bureau of Land Management, the Department has no authority to nullify their claims of ownership; the regulations allow more than one authorization to be obtained; claimants in proper circumstances may obtain further authorizations; and upon compliance with legal requirements may gather and claim their horses and burros.

George B. Shaffner et al., 26 IBLA 320 (Aug. 30, 1976)

One who has laid claim, pursuant to the Wild Free-Roaming Horses and Burros Act, to horses on the public lands and who does not remove them within a reasonable period, is subject to having the renewal of his grazing lease denied.

Truman and Velma Cross, 29 IBLA 4 (Feb. 7, 1977)

ACT OF OCTOBER 20, 1976

Land withdrawn for reclamation purposes in Imperial County, Calif., within the California Desert Conservation Area and administered by BLM under a memorandum of understanding with the Bureau of Reclamation should be regarded as "entitlement lands" in the computation of payments to be made to the county under the Act of Oct. 20, 1976, 31 U.S.C. § 1602 (1976).

County of Imperial, 40 IBLA 257 (Apr. 16, 1979)

ACT OF OCTOBER 21, 1976

H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 1 (1976), shows that the purpose of the Act of Oct. 21, 1976 (the Federal Land Policy and Management Act), which repealed the homestead laws, except as to certain lands in Alaska, was to repeal obsolete statutes relating to public lands that were incongruent with today's national goals.

Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as applications under the Federal Land Policy and Management Act of 1976, but, to the extent practical, existing regulations will govern the administration of the public lands until new regulations are issued.

Continental Telephone of California, 34 IBLA 374 (May 1, 1978)

ADDITIONAL HOMESTEADS

The land in an additional homestead entry application under the Act of Apr. 28, 1904, *as amended*, 43 U.S.C. § 213 (1970), must be contiguous to the applicant's original homestead. Neither that Act nor regulations issued thereunder require that tracts of land in such an additional entry application be contiguous to each other. The requirement of 43 CFR 2567.1(c) that land in a homestead entry application in Alaska must be in a contiguous body is maintained by the fact that the land in the additional entry must be contiguous to the original homestead.

John C. Briggs, 22 IBLA 8 (Sept. 4, 1975) 82 I.D. 432

ADMINISTRATIVE AUTHORITY

(See also Delegation of Authority, Federal Employees and Officers, Secretary of the Interior--if included in this Index.)

GENERALLY

The Bureau of Land Management, in the exercise of its discretionary power to issue special land use permits, may establish special fee assessments for off-road vehicle (ORV) events.

Walt's Racing Ass'n, 18 IBLA 359 (Jan. 30, 1975)

The failure by an oil and gas lease assignee to timely file the requisite bond as required by an intial State Office decision cannot be relied upon by the assignor as a basis for protesting a subsequent decision which reconsiders and grants a request for assignment approval, for it is the Department alone which may assert such default as a basis for denying a subsequent assignment approval request.

Joseph Alstad, 19 IBLA 104 (Mar. 4, 1975)

The issuance of a public airport lease on national resource lands lies within the discretion of the Secretary of the Interior. The Department may require an applicant for a public airport lease to accept special stipulations in order to protect the environmental quality of the land, so long as the stipulations are not inconsistent with other reasonable requirements of the Bureau of Land Management or Federal Aviation Administration.

A. W. Brothers., 19 IBLA 144 (Mar. 7, 1975)

The Bureau of Land Management may assert, in its discretion, failure to timely file assignment instruments as a basis for denying approval to an assignment where intervening assignees or other adverse interests are involved.

James V. O'Kane, F. Kenneth Millhollen, 19 IBLA 171 (Mar. 18, 1975)

The issuance of a special land-use permit is discretionary, and the Bureau of Land Management may reject a special land-use permit application when the proposed use would adversely affect the public interest, and may offer, in the alternative, a permit providing for use consonant with proper management of national resource lands.

Jerry Tecklin, Leonard Brackett, 20 IBLA 308 (May 30, 1975)

The issuance of a public airport lease on the public domain lies within the discretion of the Secretary of the Interior. A decision rejecting an airport lease application in the exercise of that discretion will be affirmed when, even though the Board differs in its opinion of the importance of some of the factors recited as grounds for the rejection, the record shows the decision to be a reasoned analysis of the factors involved, and no sufficient basis to disturb the decision is shown.

Boulder City Aero Club, Inc., 21 IBLA 383 (Aug. 18, 1975)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Reliance upon erroneous or incomplete information provided by Bureau of Land Management employees cannot create any rights not authorized by law.

John F. Brown, 22 IBLA 133 (Sept. 26, 1975)

Margaret Hughey Hugus, 22 IBLA 146 (Sept. 30, 1975)

W. E. C. Croley, 32 IBLA 5 (Aug. 24, 1977)

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

The Recreation and Public Purposes Act, and the regulations thereunder, do not authorize additional payment for the issuance of a supplemental patent (which voids an earlier patent's reversionary provision) as an alternative to forfeiture for noncompliance with the Act's provision that land patented under the Act only be used for an established or definitely proposed public project within a reasonable time following issuance of patent. The Department can alienate interests in public lands only within the limits authorized by law; therefore, issuance of a supplemental patent which eliminates the Act's mandatory reversionary provision is impermissible.

Okanogan County Public Utility, District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

Simultaneous oil and gas lease drawing entry cards which are not executed correctly will be rejected. Where an ambiguity is created by an applicant on a drawing entry card, it is not the responsibility of BLM to speculate about applicant's intention and necessarily to resolve the ambiguity in his favor.

Joseph A. Winkler, 24 IBLA 380 (Apr. 29, 1976)

A stipulation requiring an oil and gas lessee to provide a certified statement by an archaeologist concerning the existence of archaeological values on lands to be disturbed by the lessee does not constitute an unlawful delegation of authority because the purpose of the statement is to notify an authorized officer of the Department who retains the authority to determine whether the archaeological data are significant and whether such data are being or may be irrevocably lost or destroyed.

Cecil A. Walker, Alan C. F. Dille', 26 IBLA 71 (July 9, 1976)

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess et al., 27 IBLA 4 (Sept. 17, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to areas withdrawn for wildlife conservation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes. 27 IBLA 46 (Sept. 23, 1976)

The Secretary of the Interior has the authority to determine the validity of mining claims upon adequate notice and opportunity for hearing.

United States v. Mine Development Corp. et al.,
27 IBLA 238 (Oct. 18, 1976)

A decision by the Bureau of Land Management rejecting a logging road right-of-way application as not in the public interest will be affirmed in the absence of sufficient reasons to the contrary.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976)
83 I.D. 518

A grazing permittee under sec. 3 of the Taylor Grazing Act does not have an absolute right to a permit renewal even though denial thereof will impair the value of his grazing unit which is pledged as security for a bona fide loan. The Department may refuse to renew such a permit when the public interest requires that the subject land be preserved from unnecessary injury, exchanged, disposed of, or reclassified for alternate public use. Similarly, if the Department may deny renewal outright under the above circumstances, the Department may renew such a permit for a lesser term than previously allowed pending completion of a Management Framework Plan and an Allotment Management Plan which are oriented not only to livestock grazing, but also to multiple use management which includes such concerns as land and water conservation, environmental protection, and other resource management objectives which can be achieved by reclassification of national resource lands and manipulation of grazing activity.

Nat Ranch, Inc., 27 IBLA 340 (Nov. 4, 1976)
83 I.D. 542

The Department of the Interior does not have the authority to modify a statute ratifying an agreement with an Indian tribe on the grounds of fraud or coercion in the execution of the agreement.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

Reliance upon erroneous advice by Bureau of Land Management employees cannot estop the United States or confer upon an applicant any rights not authorized by law. 43 CFR 1810.3(c). Where it is not established that the asserted advice was erroneous, estoppel does not operate.

United States v. Ronald R. Tippetts, 29 IBLA 348
(Mar. 31, 1977)

The Bureau of Land Management, in exercise of its authority to regulate the acquisition of rights in the public lands, may contest any unpatented mining claim located on public land under its jurisdiction to determine, among other things, if the claimant has discovered on his mining claim a valuable mineral deposit as required by 30 U.S.C. § 22 (1970).

United States v. Gwendolyn McClurg et al., 31 IBLA 8
(June 15, 1977)

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

Pursuant to the Property Clause of the U.S. Const. art. IV, § 3, cl. 2, Congress has enacted the Taylor Grazing Act, 43 U.S.C. § 315 *et seq.* (1970), and other statutory authority which empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and to determine whether or not an individual has committed a trespass.

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174
(Sept. 15, 1977) 84 I.D. 475

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States, including lands within the National Forest System, after adequate notice and opportunity for hearing. A mining claim contest initiated under the authority of the Secretary of the Interior may be prosecuted by counsel employed by the Department of Agriculture acting on behalf of the Forest Service where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

Reliance upon erroneous and incomplete information provided by Federal employees cannot create any rights not authorized by law.

Mark W. Brose and John L. Dutra, 33 IBLA 32 (Nov. 25, 1977)

It is a proper exercise of discretion under the Federal Land Policy and Management Act of 1976 for the Bureau of Land Management to refuse to process and to reject applications for public sale pending on the date of the Act, even though it will continue to process bids and preference right applications for a sale held prior to the Act.

United Park City Mines Co., 33 IBLA 358 (Jan. 16, 1978)

Reliance upon erroneous advice by Bureau of Land Management employees cannot confer upon an oil and gas lease applicant any rights not authorized by law.

Charles M. Brady, 33 IBLA 375 (Jan. 25, 1978)

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, *as amended*, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

A consent decree obtained by the Securities and Exchange Commission establishes no precedent for cases involving different parties. Allegations of Federal securities law violations in connection with Federal oil and gas leasing should be directed to the Securities and Exchange Commission, the agency with jurisdiction over such matters. The jurisdiction of the Board of Land Appeals does not extend to matters exclusively under the jurisdiction of the SEC, but goes to matters involving compliance with oil and gas leasing statutes and regulations.

Marion Bacil, 35 IBLA 366 (June 23, 1978)

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

United States v. John Gavssich, 36 IBLA 111 (July 10, 1978)

A consent decree obtained by the Securities and Exchange Commission (SEC) establishes no precedent for cases involving other parties. The Board of Land Appeals lacks jurisdiction over matters delegated to the SEC. Allegations of Federal Securities Law violations should be directed to the SEC rather than to the Board of Land Appeals.

William Miller, 36 IBLA 309 (Aug. 28, 1978)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

Established and longstanding Departmental policy relating to the administration of the simultaneous oil and gas leasing system, premised upon regulatory interpretation, is binding on all employees of the Bureau of Land Management, until such time as it is properly changed.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39 (Sept. 18, 1978) 85 I.D. 380

Milton D. Feinberg, Benson J. Lamp (On Reconsideration), 40 IBLA 222 (Apr. 11, 1979) 86 I.D. 234

Erroneous or incomplete advice by Bureau of Land Management employees cannot operate to vitiate an Act of Congress, particularly where the governing statute and regulations on the issue are free from ambiguity.

Public Service Co. of Oklahoma, 38 IBLA 193 (Dec. 6, 1978)

Department of the Interior, as an agency of executive branch of Government, is not proper forum to decide whether or not statute enacted by Congress is constitutional.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

Reliance upon erroneous notations to a BLM serial register page or incomplete information provided by BLM employees cannot create any rights not authorized by law.

Alver C. Duncan, 39 IBLA 144 (Jan. 29, 1979)

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

Where the Secretary has declined to exercise his jurisdiction, a decision rendered by this Board is final for the Department. Hence, statements by BLM and arguments of the Solicitor, while valuable to the Board, are not binding upon the Board.

H. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

Subsequent to the passage of the Federal Land Policy and Management Act of 1976 (FLPMA), the Department lacked the authority to accept donations of land under the Act of July 14, 1960, which had been expressly repealed by FLPMA. Inasmuch as the actions of the Secretary under the Act of July 14, 1960, were not ministerial, the doctrine of relation cannot be used to validate, on a *nunc pro tunc* basis, an acceptance of a donation under the authority of the Act of July 14, 1960, occurring after the repeal of that Act by Congress.

Junior L. Dennis, 40 IBLA 12 (Mar. 9, 1979)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Reliance upon erroneous information given by BLM employees cannot confer upon an oil and gas lease applicant any rights not authorized by law.

Elizabeth Pagedas (On Reconsideration), 40 IBLA 21 (Mar. 9, 1979)

Reliance on incomplete information supplied by Bureau of Land Management employees cannot estop the United States or excuse compliance with a regulation.

Fred S. Ghelarducci, 41 IBLA 277 (June 28, 1979)

Where an Agency lays down its own procedures and regulations, those procedures and regulations cannot be ignored, even by the Agency itself.

Estate of Emory Dennis Juneau, 7 IBIA 164 (June 29, 1979)

A decision by the Bureau of Land Management canceling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

Blue Star, Inc., Atomic Western, Inc., Fremont Energy Corp., Ivor Adair, 41 IBLA 333 (July 11, 1979)

The Taylor Grazing Act, 43 U.S.C. §§ 315a-315r (1970), and other statutory authority empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and whether or not an individual has committed a trespass.

Bureau of Land Management v. Harris Brothers, 42 IBLA 48 (July 31, 1979)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Charlie Carnal, Walter Peck, and Edward Borzansky, 43 IBLA 10 (Sept. 11, 1979)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the U.S. Forest Service and prosecuted by counsel employed by the U.S. Department of Agriculture, with U.S. Forest Service employees as witnesses.

United States v. Jon Zimmers and Claire Kelly, 44 IBLA 142 (Nov. 30, 1979)

ENFORCEMENT OF CRIMINAL VIOLATIONS

The Board of Land Appeals, in its adjudication of appeals to determine rights of parties to receive or preserve interests in Federal lands, has a concomitant obligation to preserve the integrity of the process, and where it appears to the Board that the administrative record of a case contains strong evidence of multiple violations of 18 U.S.C. § 1001 (1976), the Board will refer the matter with its recommendation that an investigation be initiated to determine whether criminal charges should be brought.

Lee S. Bielski, 39 IBLA 211 (Feb. 8, 1979) 86 I.D. 80

ESTOPPEL

Generally, the Government is not estopped from demanding oil and gas lease royalty payments it is owed, even if its employees may have made prior mistakes in accepting or computing the royalty.

Gulf Oil Corp., et al., 21 IBLA 1 (June 16, 1975)

Reliance upon erroneous or incomplete information provided by Bureau of Land Management employees cannot create any rights not authorized by law.

John F. Brown, 22 IBLA 133 (Sept. 26, 1975)

Margaret Hughey Boggs, 22 IBLA 146 (Sept. 30, 1975)

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

The Department of the Interior is not estopped from denying the legality of a payment in lieu of forfeiture provision inserted in a Recreation and Public Purposes Act patent when such denial works no serious injustice against the patentee and implementation of the provision would harm the public interest by divesting the Government of all jurisdiction over the patented land, thus, precluding enforcement of the Recreation and Public Purposes Act requirement that lands patented under the Act be devoted to a definitely proposed project for the benefit of the public.

Okanogan County Public Utility, District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

A Native allotment applicant is charged with notice of the official land records of the Bureau of Land Management. No estoppel will result from a delay in the rejection of a Native allotment where the basis of the decision is that the land was segregated by a State selection application prior to commencement of occupancy, the delay was not unreasonable, the State selection was a matter of public record, and no misrepresentations were made to the applicant.

Roselyn Isaac, 23 IBLA 124 (Dec. 23, 1975)

The doctrine of collateral estoppel will not bar the administrative contest of the validity of five mining claims which, together with another claim, were the subject of previous condemnation actions for the taking of a temporary exclusive easement over the claims, where the issue of the validity of the individual claims was not actually litigated and it was wholly unnecessary for the court to adjudicate that issue in rendering its judgment.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it was not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL--Continued

thereon, with the result that the claimant was thereby induced to do so, to his ultimate damage.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy B. Cummins, 26 IBLA 223 (Aug. 17, 1976)

Where an applicant for grazing privileges does not show the type of misconduct which would be a basis for estoppel against the Government, the provisions of 43 CFR 4115.2-1(e)(9)(i) and (e)(13)(i) cannot be waived on the basis of such misconduct.

A. D. Findlay (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

Reliance upon erroneous advice by Bureau of Land Management employees cannot estop the United States or confer upon an applicant any rights not authorized by law. 43 CFR 1810.3(c). Where it is not established that the asserted advice was erroneous, estoppel does not operate.

United States v. Ronald D. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

The fact that a mining claimant has held a claim for many years and performed work on the claim does not, by itself, create any rights against the Government which will estop the Government from determining the validity of the claim. It is incumbent upon the locator of a mining claim to exercise considerable care in ascertaining the status of the land embraced in the claim and the limitations of his rights as the holder of an unpatented mining claim. Failure of a Government employee to advise appellant that the land embraced in the mining claim was closed to mining location cannot give life to an invalid claim.

Arthur W. Boone, 32 IBLA 305 (Sept. 30, 1977)

Reliance upon erroneous and incomplete information provided by Federal employees cannot create any rights not authorized by law.

Mark V. Boone and John L. Dutra, 33 IBLA 32 (Nov. 25, 1977)

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL--Continued

The failure of a noncompetitive oil and gas lease offeror to complete the date on the simultaneous oil and gas drawing entry card is not excused, and the Department is not estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease in acceptance of an offer which was deficient for the same reason.

Tina A. Hogan, 33 IBLA 213 (Dec. 21, 1977)

The failure of a mining claimant to file the notice of recordation required by sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), cannot be excused on the basis of equitable estoppel where no discussion covering the 90-day requirement was had between the Department and appellant's representatives.

Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (Jan. 16, 1978)

The Government is not estopped from collecting royalty payments which are owed, even if it has accepted improper payments in the past.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

Clair E. Caldwell et al., 42 IBLA 139 (Aug. 16, 1979)

Where a mining claimant alleges that forest rangers allowed him to build and occupy a cabin on the claim without informing him that it was illegal to do so, it is not appropriate to estop the Government from declaring the claim null and void, for several reasons: mere acquiescence in an action is not "affirmative misconduct" by a Government employee, as it was not false representation or concealment of material facts done with the intent that the claimant rely thereon; the impression created by the inaction of the forest rangers was not erroneous and, so, claimant was not misled, as he could rightfully move the cabin to the site and occupy it as long as so doing was incident to mineral development of a valid mining claim; and because the claimant should have known that he could not live on the premises indefinitely despite his failure to develop the claim, and that he would have to move the cabin or lose it, if the claim was declared null and void.

The Government is not barred from declaring a mining claim null and void by the doctrine of laches.

United States v. Joseph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

Even though the Bureau of Land Management from Jan. 26, 1972, to Aug. 19, 1977, considered preference right coal lease applications in a pending status, it is not estopped to reject such applications as having been filed late because it has not been demonstrated that appellant relied on the Bureau's representations to appellant's detriment.

Thermal Energy Co. et al., 36 IBLA 334 (Aug. 28, 1978)

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL--Continued

Where national forest land is open to mineral location, the failure of a district forest ranger to object to the location or development of mining claims for a number of years, or to request that a contest of the validity of the claims be initiated, does not estop the United States from bringing a contest, nor is the contest barred by laches.

United States v. Verdugo & Miller, Inc., 37 IBLA 277 (Oct. 20, 1978)

Reliance upon erroneous or incomplete information provided by Government employees cannot create any rights not authorized by law. 43 CFR 1810.3(c).

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

Reliance upon erroneous notations to a BLM serial register page or incomplete information provided by BLM employees cannot create any rights not authorized by law.

Alvet C. Duncan, 39 IBLA 144 (Jan. 29, 1979)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

Dorothy Smith, 39 IBLA 306 (Feb. 23, 1979)

Reliance on incomplete information supplied by Bureau of Land Management employees cannot estop the United States or excuse compliance with a regulation.

Fred S. Ghelarducci, 41 IBLA 277 (June 28, 1979)

Inaction or unauthorized acts by an employee of the Bureau of Indian Affairs cannot serve as the basis for conferring rights not authorized by law. Moreover, neither the Secretary of the Interior nor the Department is bound or estopped by such inaction or unauthorized acts.

Estate of Emory Dennis Juneau, 7 IBIA 164 (June 29, 1979)

A delay in adjudication of an application by the Department cannot create rights contrary to law.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

Estoppel of the Government is an extraordinary remedy, especially as it relates to public lands, and is to be applied with the greatest care and circumspection.

The elements of an estoppel are the following: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

Estoppel is not available against the Government when the Government agent making representations acts beyond the scope of his authority. Furthermore, reliance upon information or the opinion of any officer or employee

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL--Continued

of BLM cannot operate to vest any right not authorized by law.

Dorothy Smith, Keith C. Hayes, 44 IBLA 25 (Nov. 6, 1979)

LACHES

Where unpatented mining claims were located some 50 years before the claimant filed application for patent, during which time they went unchallenged by the Government, the United States is not barred from contesting the validity of the claims by invocation of the equitable defense of laches.

Frattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

Where national forest land is open to mineral location, the failure of a district forest ranger to object to the location or development of mining claims for a number of years, or to request that a contest of the validity of the claims be initiated, does not estop the United States from bringing a contest, nor is the contest barred by laches.

United States v. Verdugo & Miller, Inc., 37 IBLA 277 (Oct. 20, 1978)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescences of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

A delay in adjudication of an application by the Department cannot create rights contrary to law.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

ADMINISTRATIVE PRACTICE

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George H. Crapo, Richard L. Crapo, 19 IBLA 208 Mar. 21, 1975)

ADMINISTRATIVE PRACTICE--Continued

Where the record does not clearly show whether either or both of two grazing lease applicants are preference-right applicants and does not reflect consideration of all of the factors mandated by 43 CFR 4121.2-1(d)(2) for evaluating conflicting grazing lease applications, a decision awarding the lease to one of the parties will be set aside and the case remanded for further consideration.

Elmer M. Johnson, 20 IBLA 111 (Apr. 25, 1975)

When a coal lease applicant asserts, on appeal, facts which may show it to be entitled to favorable consideration of its lease application under the short-term need criteria promulgated by the Department, the decision rejecting the lease application will be set aside and the case remanded for further consideration.

Idaho Power Co., 20 IBLA 125 (Apr. 28, 1975)

A regulatory change in the definition of the phrase "primary term" of an oil and gas lease is not an order or consent of the Secretary of the Interior to suspend operations under an oil and gas lease.

Inexco Oil Co., 20 IBLA 134 (May 5, 1975)

A regulation pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows settlement rights to be initiated while a permit issued under that Act is in existence. The policy manifest in that regulation may be followed, in the exercise of the Secretary's discretion, to permit consideration of a Native allotment applicant's occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of Mar. 4, 1927, and the regulation was promulgated after intiation of the occupancy.

Kristeen J. Burke, Joe B. Belovedoff, Victor Belovedoff, 20 IBLA 162 (May 5, 1975)

A Bureau of Land Management State Office may reconsider one of its decisions prior to the filing of an appeal in the case, but the filing of an appeal terminates that authority.

A person who drafts and submits an agreement to this Department must bear the burden of any ambiguity in the document if the Department's interpretation is reasonable.

An original letter is not needed to withdraw a lease offer. The requirements are that the withdrawal is properly filed and the person making the withdrawal is properly identified.

A person signing an assumed name is responsible just as if he signed his own name.

John J. Sexton (On Reconsideration), 20 IBLA 187 (May 7, 1975)

A request for equitable adjudication relief to permit purchase of a headquarters site claim is premature in the absence of an application to purchase the claim.

The equitable adjudication authority is not appropriate and may not be applied to permit the filing of a headquarters site notice of location after the land has been withdrawn.

Ross P. Lamoureux, 20 IBLA 243 (May 16, 1975)

ADMINISTRATIVE PRACTICE--Continued

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

George E. Jackson, 20 IBLA 253 (May 16, 1975)

Where the Bureau of Land Management changes an administrative practice to thereafter refuse to accept unofficial copies of the simultaneous oil and gas lease entry card, by an order dated Mar. 26, 1975, the new practice will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Feb. 1975 simultaneous filing period.

V. J. Malloy, 20 IBLA 327 (June 6, 1975)

Equitable adjudication authority is not appropriate and may not be applied to permit filing of a homesite notice of location after the land has been withdrawn.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against subsequent applications, which were allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piecemeal adjudication.

Michael A. Heaney, 21 IBLA 339 (Aug. 18, 1975)

Nelda B. McAndrew, 24 IBLA 205 (Mar. 22, 1976)

Until a final authoritative judicial determination is made of the title to geothermal resources in lands patented with a reservation of all minerals to the United States, a geothermal lease application which omits such patented lands from a section will not be considered in compliance with 43 CFR 3210.2-1(c) requiring all available lands in a section to be described in the lease application. However, the application may be suspended as to that section, rather than rejected, until the title question is resolved.

Energy Partners, Edward D. Towne, 21 IBLA 352 (Aug. 25, 1975)

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with certain title information in the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information.

A Bureau of Land Management Office has no jurisdiction to take further action on an oil and gas lease application where there has been an appeal to the Board of Land Appeals on that application.

Jean Oakason, 22 IBLA 13 (Sept. 10, 1975)

The Secretarial guideline of Oct. 18, 1973, that a Native allotment application should be rejected when the applicant fails to show 5 years of use and occupancy prior to a withdrawal of the land: (a) is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970); and (b) is a proper exercise of the discretion vested in the Secretary by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to

270-3 (1970), the application of which does not violate any right of the allotment applicant.

Herman Joseph (On Reconsideration), 22 IBLA 266 (Oct. 30, 1975)

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with reasonable title information in the county recorder's offices as a precondition to lease issuance.

Jean Oakason, 22 IBLA 311 (Nov. 10, 1975)

Where the record of a Native allotment application at the time of adjudication shows that rejection would be proper, appellant will not be allowed on appeal to submit data which might warrant a different result, absent a clear and convincing showing explaining why the information was not afforded to the Bureau of Land Management when appellant was called upon for such data.

David E. Stevens, 23 IBLA 221 (Jan. 8, 1976)

Where a Native allotment application is properly rejected and on appeal the applicant first submits assertions which, if proved, might qualify her, but fails to make a showing explaining why the data was not timely filed, the rejection of the application will stand.

Marion Stevens, 23 IBLA 280 (Jan. 12, 1976)

Although a respondent in a grazing license trespass hearing brought by the Bureau of Land Management has the right to be represented and aided by legal counsel, the Department has no duty or responsibility under the Constitution or the Administrative Procedure Act to provide such counsel for him.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

Even if it be established that a controlling regulation had been violated in previous cases, such violation does not afford a valid predicate for further violations of the regulation.

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

Where the Bureau of Land Management ordered on Mar. 26, 1975, that unofficial copies of the simultaneous oil and gas lease entry card were invalid and to be rejected, that order will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Jan. 1975 simultaneous filing period.

Eve Reese, 25 IBLA 284 (June 22, 1976)

When the holder of a grazing lease is found to have violated regulations and the terms of his lease because his cattle have trespassed on Federal land, his lease may be canceled when lesser sanctions have proved to be of no effect or when the nature of the violation demands such severity. However, a decision canceling a lease will be set aside where the district manager relied upon alleged trespasses of which the lessees had no notice and which occurred after a show cause notice

had issued, and the case will be remanded for further proceedings.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976)
83 I.D. 269

The right to a hearing on disputed issues of fact involving mining claims includes the right to adequate notice of the grounds upon which a claim's invalidity is asserted.

A Government contest complaint which asserts the invalidity of a claim because of insufficient quantity and quality of the located mineral within the limits of the claim does not put into issue the existence of excess reserves within the limits of a claim.

Where the alleged ground of invalidity of a claim was not charged in the complaint, and was not a matter of contention at the hearing, invalidation of the claim on such ground is improper, despite some evidence to support it, absent an opportunity for the contestee to present evidence on such issue where it appears that there is other pertinent evidence that may be submitted on that issue.

Where on appeal from a decision sustaining the Government's challenge of a patent application it is determined that the alleged ground of invalidity was one not raised in the complaint or at the hearing, the decision rejecting the patent application will be set aside and the Government will be afforded an opportunity to amend its complaint to embrace the charge. Where the Government does amend its complaint the mineral claimant will be granted the right to an evidentiary hearing on such issue.

United States v. Robert B. McElvaine, 26 IBLA 20 (July 7, 1976)

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

The denial of a private landowner's request that the Bureau of Land Management share in the expenses of constructing a fence between Federal and private land will be upheld where the landowner has failed to show a valid legal or factual reason for granting the request.

John L. Time and Ruth D. Blomgren, 30 IBLA 317 (June 6, 1977)

A special recreation use permit for commercial boat operations may be denied renewal for nonuse over a 2-year period of any allocated passenger days under a properly noticed "use or lose" policy. However, where the permit program is relatively recent and administrative techniques are not fully reliable, and where the appellant documents on appeal some use of its allocation during the 2-year period, the permit should not be denied renewal under the "use or lose" policy.

Canyoneers, Inc., 30 IBLA 354 (June 9, 1977)

ADMINISTRATIVE PRACTICE--Continued

Where a decision of the Board of Land Appeals is based upon an interpretation of Departmental policy, and that policy is subsequently revised and clarified so as to impel a different result in the case without prejudice to the right of any third party, on reconsideration by the Board that portion of its original decision will be modified and the revised policy will be implemented.

Werner Bergman (On Reconsideration), 31 IBLA 21 (June 20, 1977)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party and the statements of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

Michael J. Madigan, Robert E. Haines, 31 IBLA 58 (June 23, 1977)

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

Where a protest has been made against the validity of a drawing entry card (DEC) in the simultaneous oil and gas lease filing procedure, it is improper to issue a lease in response to the protested DEC before the protest is finally dismissed. The Board of Land Appeals, rather than a BLM State Office, has the authority to make final administrative determinations for the Department in matters relating to protests against oil and gas lease offers.

D. E. Pack, 31 IBLA 283 (July 22, 1977)

Where an area manager's decision divides the sec. 15 grazing use of a tract of public land between two applicants on the assumption that both are qualified preference right claimants, and it is determined on appeal that one claimant is not qualified, the decision will be set aside and the case remanded to the Bureau of Land Management for determination of the rights of the other applicant.

Mark K. Trask, 32 IBLA 395 (Nov. 9, 1977)

A requirement to submit a "certified copy" of a private agreement is satisfied by the submission of a copy of the agreement with a statement that it is a copy of that agreement.

Ricky L. Gifford, 34 IBLA 160 (Mar. 10, 1978)

Where the Director, BLM, in a general instruction to all Bureau offices, has specified which kinds of discrepancies will result in the exclusion of drawing entry cards from a drawing of simultaneously filed oil and gas lease offers, and directs that all other cards are to be included in the drawings, the action of one field office to exclude certain other types of cards will be reversed as being in contravention of such directive.

Margaret A. Ruggiero et al., 34 IBLA 171 (Mar. 14, 1978)

W. C. Yahmel, 34 IBLA 377 (May 1, 1978)

ADMINISTRATIVE PRACTICE--Continued

Remedies for an alleged breach of a private lease agreement involving preference lands for a sec. 15 grazing lease must be sought in the appropriate courts and not before the Department of the Interior, which has no jurisdiction over such matters.

Evelyn Klemen, 35 IBLA 23 (May 5, 1978)

Where the official records of the Bureau of Land Management show a reservoir right-of-way affecting certain land, the oil and gas therein may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.* (1970). This result follows even though the reservoir right-of-way may have been issued improperly or should have been terminated.

Republic Oil & Mining Co. and Margaret V. Coombs, 35 IBLA 212 (May 26, 1978)

A past incorrect application of the law in adjudication of oil and gas lease offers is no authorization for failure to follow regulations in the case of an offer currently under adjudication.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

Where the Director of the Bureau of Land Management issues a general instruction to all BLM offices specifying which kinds of discrepancies will result in the exclusion of drawing entry cards from a drawing of simultaneously filed oil and gas lease offers and directing that all other cards are to be included in the drawings, the action of one field office to exclude certain other types of cards will be reversed as being in contravention of such directive.

Raymond A. Berry et al., 35 IBLA 386 (June 27, 1978)

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

United States v. John Gavanich, 36 IBLA 111 (July 14, 1978)

The holder of a mining claim located within the Papago Indian Reservation under sec. 3 of the Act of June 18, 1934, 48 Stat. 984 (repealed, Act of May 27, 1955, 69 Stat. 67), is required to make the annual rental payment for the claim in advance (on or before the anniversary date of location of the claim). A decision invalidating a claim will be upheld where proceedings to void the claim are not initiated until several months after the rental due date, there is no evidence the rent was paid for the year, and appellant admits the failure to pay was an oversight.

John A. Cooley, 36 IBLA 245 (Aug. 14, 1978)

Established and longstanding Departmental policy relating to the administration of the simultaneous oil and gas leasing system, premised upon regulatory interpretation, is binding on all employees of the Bureau of

Land Management, until such time as it is properly changed.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39 (Sept. 18, 1978) 85 I.D. 380

Milton D. Feinberg, Benson J. Lamp (On Reconsideration), 40 IBLA 222 (Apr. 11, 1979) 86 I.D. 234

In an administrative hearing to determine the validity of a mining claim, the requirements of due process are satisfied when notice and opportunity for an impartial hearing are provided in accordance with the Administrative Procedure Act. 5 U.S.C. § 551 et seq. (1976).

The procedures followed by the Department of the Interior in the initiation, prosecution, and deciding of mining contest cases are in full compliance with the Administrative Procedure Act.

The mere fact that the witnesses, the administrative law judge, and members of the Board of Land Appeals are employees of the Department of the Interior does not establish unfairness in the contest proceeding.

A Forest Service mineral examiner who is a witness in a Government contest of a mining claim is not disqualified nor is his testimony discredited merely because he is an employee of that agency.

In order to sustain a charge that an administrative law judge should be disqualified or his decision set aside for bias, a substantial showing of personal bias must be made.

The Secretary of the Interior has plenary authority over the public lands, including mineral lands, and has been entrusted with the function of making the initial determination of the validity of claims against such lands.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

Where there exist factual questions about the location of section and subdivisional corners in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

A final Departmental appellate decision construing a regulation will be given immediate effect, and will not be applied with prospective effect only, unless the decision alters materially the interpretation given the regulation by earlier Departmental decisions or official published opinions, and unless the equitable benefit of the decision is not outweighed by ill effects of allowing a benefit in derogation of the regulation.

D. E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978) 85 I.D. 408

Gertrude H. D'Amico, 39 IBLA 68 (Jan. 17, 1979)

Public notice and hearing is not required by the Code of Federal Regulations prior to closure of areas of the public lands to outdoor recreation use pursuant to 43 CFR 6010.4, implementing the multiple use management provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1732 and 1733 (1976).

While an appeal of one decision of the BLM is pending before the Board, the BLM is without authority to exercise jurisdiction in the matter which is the subject of the appeal. Where the BLM exercises jurisdiction and the subsequent decision presents the same issue as the first, and the parties are given an adequate opportunity at the hearing and on appeal to present evidence and argue as to this issue, the Board will proceed to consider both decisions on their merits.

California Ass'n of Four-Wheel Drive Clubs et al., 38 IBLA 361 (Dec. 29, 1978)

Where the Secretary has declined to exercise his jurisdiction, a decision rendered by this Board is final for the Department. Hence, statements by BLM and arguments of the Solicitor, while valuable to the Board, are not binding upon the Board.

The interpretation of an existing regulation by this Board to determine its applicability to the facts at hand does not constitute rulemaking by the Board.

R. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Lee S. Bielski, 39 IBLA 211 (Feb. 6, 1979) 86 I.D. 80

Where the Director, Bureau of Land Management, has specified which kinds of discrepancies will result in the exclusion of drawing entry cards from a drawing of simultaneously filed oil and gas lease offers, and directs that all other cards are to be included in the drawings, the action of one field office to exclude certain other types of cards will be reversed as being in contravention of such directive.

Helen E. Serencha, 39 IBLA 318 (Feb. 23, 1979)

Subsequent to the passage of the Federal Land Policy and Management Act of 1976 (FLPMA), the Department lacked the authority to accept donations of land under the Act of July 14, 1960, which had been expressly repealed by FLPMA. Inasmuch as the actions of the Secretary under the Act of July 14, 1960, were not ministerial, the doctrine of relation cannot be used to validate, on a nunc pro tunc basis, an acceptance of a donation under the authority of the Act of July 14, 1960, occurring after the repeal of that Act by Congress.

Junior L. Dennis, 40 IBLA 12 (Mar. 9, 1979)

It is proper to set aside a decision which raises questions concerning the facts asserted by BLM in rejecting an oil and gas lease offer, and to remand the case to BLM for further review and consideration of appellant's allegations.

Robert W. David, 40 IBLA 236 (Apr. 16, 1979)

Where a protestant against the issuance of leases, for oil and gas presents evidence demonstrating the existence of a written partnership between joint offers, and the offerors have not complied with the regulations requiring certain showings of partnerships, the offers cannot be honored.

American Quasar Petroleum Co., 42 IBLA 243 (Aug. 22, 1979)

ADMINISTRATIVE PRACTICE--Continued

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

United States v. Elbert Gassaway, 43 IBLA 382 (Oct. 31, 1979)

Where a protest, with accompanying supporting evidence, alleges that the oil and gas lease offer drawn first in a simultaneous filing-drawing procedure violated the regulations because a party in interest was not disclosed and there was a multiple filing, the Bureau of Land Management should first afford the drawee an opportunity to respond to the protest before rejecting the offer based on facts alleged in the protest. The error, however, is rendered harmless where on appeal the offeror has full opportunity to make factual submissions and respond to the allegations.

H. J. Enevoldsen, 44 IBLA 70 (Nov. 20, 1979)
86 I.D. 643

The filing of a timely protest suspends the authority of the State Office to act upon the matter until the protest has been ruled upon. Further, action is to be additionally suspended after a ruling on the protest for the period of time in which a person adversely affected may file a notice of appeal therefrom.

James W. Smith, 44 IBLA 275 (Dec. 26, 1979)

ADMINISTRATIVE PROCEDURE

(*See also* Appeals, Contests and Protests, Hearings, Rules of Practice--if included in this Index.)

GENERALLY

The denial of a petition for classification and the rejection of an application under the Recreation and Public Purposes Act for a lease of lands which have been withdrawn and which are also subject to a State selection application which, under the terms of the withdrawal order, may be allowed, does not violate the tenets of due process because the disposition of the petition-application is at the discretion of the Secretary, and the petitioner-applicant has no vested right protected by constitutional guarantees or by the Administrative Procedure Act.

Mountaineering Club of Alaska, Inc., 19 IBLA 198 (Mar. 19, 1975)

The doctrine of res judicata will not bar an administrative proceeding to determine the validity of three unpatented mining claims where, in a previous condemnation action for the War Department's taking of a temporary exclusive easement covering the claims, the judgment of the federal district court was limited solely to the compensation to be paid by the United States, and there was no litigation of the issue of the validity of the claims and no prior adjudication of that issue in the Department of the Interior.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimants concerning the validity of the claims with the intention that the claimants should act in reliance thereon, with the

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

result that the claimants were thereby induced to do so, to their ultimate damage.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of three mining claims which were the subject of a previous condemnation action for the taking by the Government of a temporary exclusive easement over the claims, where the issue of the validity of the claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

The Department of the Interior has jurisdiction, in proper proceedings, to determine the validity of mining claims on Federal lands.

United States v. A. B. Fleming et al., 20 IBLA 83 (Apr. 24, 1975)

The rejection of an application for the purchase of land under the Recreation and Public Purposes Act does not violate the tenets of due process since the disposition of the application is at the discretion of the Department, and the applicant has acquired no vested right protected by the United States Constitution.

Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182 (Oct. 7, 1975)

Although a respondent in a grazing license trespass hearing brought by the Bureau of Land Management has the right to be represented and aided by legal counsel, the Department has no duty or responsibility under the Constitution or the Administrative Procedure Act to provide such counsel for him.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

When deciding whether issuance of a phosphate prospecting permit is appropriate, the Bureau of Land Management is entitled to rely on the reasoned opinion of Geological Survey as its technical expert. A mineral determination made by Geological Survey will not be disturbed in the absence of a clear and definite showing of error. However, when Survey later changes its own determination, the case will be remanded for further consideration.

Philip Shaiman, 25 IBLA 177 (June 14, 1976)

A noncompetitive oil and gas lease applicant's failure to submit the statement of interest of the other parties in interest to the offer is not excused, nor is the Department estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease to the applicant on an offer which was deficient for the same reason.

Leon M. Flanagan et al., 25 IBLA 269 (June 24, 1976)

Where the Bureau of Land Management determines that an Alaska Native allotment application should be rejected because the land was not used and occupied by the applicant, the BLM shall issue a contest complaint pursuant to 43 CFR 4.451 *et seq*. Upon receiving a timely answer to the complaint, which answer raises a disputed issue of material fact, the Bureau will forward the case file to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, for assignment of an administrative law judge, who will proceed to

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

schedule a hearing at which the applicant may produce evidence to establish entitlement to his allotment.

Donald Peters, 26 IBLA 235 (Aug. 17, 1976)
83 I.D. 308

John Moore et al., 40 IBLA 321 (Apr. 30, 1979)
86 I.D. 279

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

United States v. Arizona Mining and Refining Co., Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

United States v. Andy Syndtad, 42 IBLA 313 (Aug. 29, 1979)

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

Service of a document upon a person's attorney of record constitutes effective service upon such person.

United States v. Mine Development Corp. et al., 27 IBLA 238 (Oct. 18, 1976)

Where the State of Alaska has applied to select certain land and has been given tentative approval of that selection, and thereafter a conflicting Native allotment application is filed which is supported only by meager evidence of use and occupancy, it is error to allow the allotment application and to cancel the State's tentative approval and reject the selection application without notice and an opportunity for a hearing in which the State may participate.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

An applicant for a private land exchange cannot benefit from the doctrine of equitable estoppel where no agent of the Government who was authorized to consummate the exchange falsely and materially misrepresented to or concealed material facts from appellant concerning the Government's position with respect to the proposed exchange.

Siesta Investments, Inc., 28 IBLA 118 (Nov. 15, 1976)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

The U.S. Geological Survey is the technical expert of the Department of the Interior in matters concerning geologic evaluations. The Bureau of Land Management is entitled to rely on mineral determinations of Survey, such as qualification of a test well as a discovery well defined by a unit agreement, in the absence of a clear and definite showing of error.

Corrine Grace, 30 IBLA 296 (June 1, 1977)

Where, pursuant to 43 U.S.C. § 315g (1970), a State has acquired land subject to a reservation of minerals to the United States, and the State thereafter leases the surface of the land to a corporation for purposes which are plainly incompatible with mining, the surface lessee has standing to initiate a private contest to determine the validity of unpatented mining claims located on the land. It is not essential to the cause of action that there be an actual physical interference by one party with the other party's use of the land if their respective interests are clearly and potentially conflicting.

Continental Oil Co. v. Aztec Exploration and Development Co., 32 IBLA 1 (Aug. 24, 1977)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a proceeding to determine the validity of an unpatented mining claim the claimants must prevail, if at all, upon the strength of their own case, rather than upon any weakness in that of the Government.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

A land use permit which, by its own terms, is subject to termination after failure of the permittee to comply with its provisions, may be revoked by BLM where the permittee has been requested to discontinue an unauthorized use and thereafter fails to correct the breach.

Charles W. Shell et al., D-78-3 (Nov. 15, 1977)

The timeliness of filing Federal tax returns and payments and of making rental payments for Federal oil and gas leases are governed by different statutes and regulations and are not the same. Receipt in the proper Bureau of Land Management office determines the timeliness of rental payment, whereas the Internal Revenue Service uses a postmark date. The postmark date is relevant in considering a Federal oil and gas lease rental only to determine if the lessee exercised reasonable diligence so as to warrant reinstatement of a lease terminated for failure to pay the rental timely.

David R. Smith and Darla L. Smith, 33 IBLA 63 (Dec. 5, 1977)

Under 43 CFR 4.410, any party to a case who is adversely affected by a decision of the Bureau of Land Management has a right of appeal to the Board of Land Appeals, even where the decision concerns legislation which has been repealed.

Fancher Bros., 33 IBLA 262 (Jan. 5, 1978)

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

Under 43 CFR 4.401(a), a notice of appeal to the Board of Land Appeals may be considered even if not filed within the 30-day appeal period, where it is filed within 10 days of the deadline date and is transmitted within the appeal period.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

Where the Bureau of Land Management brings a contest complaint against unpatented mining claims, naming as contestee only the estate of the deceased claimant, proper service of process upon the court appointed administrator, executor, or personal representative of the deceased claimant is necessary in order to affect the interests of all the heirs of the deceased.

Heirs of a deceased mining claimant who personally respond without protest or objection to a Government contest complaint which names as contestee only the estate of their intestate decedent will be bound by the result of such contest insofar as it purports to affect their interest in that estate, even though service on the estate itself was faulty.

United States v. Estate of W. B. Wood, 34 IBLA 44 (Feb. 16, 1978)

The Federal Rules of Civil Procedure are not binding on administrative agencies.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to mineral claimant's lack of good faith must be clear.

United States v. Clayton A. Dillman and Jean P. Dillman, 36 IBLA 358 (Aug. 31, 1978)

Where unpatented mining claims were located some 50 years before the claimant filed application for patent, during which time they went unchallenged by the Government, the United States is not barred from contesting the validity of the claims by invocation of the equitable defense of laches.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

A Bureau of Land Management decision rejecting a selection application by the State of Utah under its Miner's Hospital Grant because the land is deemed mineral in character due to a classification as valuable for oil, gas, and coal will be set aside because it failed to consider relevant statutes and regulations permitting selections of land valuable for minerals leasable under the Mineral Leasing Acts with a reservation of the minerals to the United States.

A State selection application for lands valuable for leasable minerals may be rejected where it is determined that the disposal of the surface rights will unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts and there is a proper basis in the record for such a determination which is unrefuted by the applicant. However, if there is no substantiation in the record for the determination and a State asserts error, the case will be remanded to the Bureau of Land Management to reconsider the determination, with the Geological Survey, and substantiate the basis of any future determination.

State of Utah, Department of Natural Resources, 38 IBLA 85 (Nov. 15, 1978)

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(3) do not violate due process.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

An appeal from a decision denying a protest against the issuance of a patent must be dismissed if the patent has been issued, because the Department has no jurisdiction to act further in the matter.

Because issuance of a patent removes the land from Departmental jurisdiction, it is not proper to issue that patent simultaneously with dismissal of a protest against the patent application because such action deprives the protester of his right to review and precludes compliance with 43 U.S.C.A. § 1701(a)(5) (West Supp. 1978) which mandates objective administrative review of initial decisions.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Ralph and Ruth Dickinson, 39 IBLA 258 (Feb. 15, 1979)

When a State Office rejects the offer of a first-drawn applicant in a drawing under the simultaneous oil and gas leasing program, an appeal by the applicant raises the issue of his qualifications to hold the lease. The qualifications of the second-drawn applicant are irrelevant until such time as the offer of the first-drawn applicant is rejected and all his avenues of appeal are exhausted. However, it is not improper for BLM to name the second-drawn applicant as an adverse party in a decision rejecting the first-drawn applicant.

Thomas B. Flickinger, William S. Flickinger, et al., 40 IBLA 53 (Mar. 16, 1979)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

Regulation 43 CFR 4.450-1 gives a person with an adverse interest in land a right to contest an adverse claim. The Department of the Interior has consistently recognized States as included within the term "person" within the meaning of the regulation, allowing them to initiate private contests.

Where the State of Alaska has shown an interest in land in its existing airport, it may bring a private contest to challenge Native allotment applications for land in conflict with the airport.

State of Alaska, 40 IBLA 79 (Mar. 22, 1979)

The State of Alaska will be afforded time within which to bring private contests against Native allotment applications conflicting with an existing airport runway built by the State and to show it has standing to contest. If it does so timely, the Bureau of Land Management will adjudicate its standing as a contestant and the contests will proceed if it finds affirmatively. If not, the State's timely objections will be taken as a protest and a factfinding hearing will be held. If the State fails to take timely action, a decision rejecting its application to reinstate a conflicting airport lease application will stand.

State of Alaska, 40 IBLA 118 (Mar. 27, 1979)

Where the Geological Survey, in making its decision, has reviewed the same information submitted on appeal to the Board of Land Appeals to show that there was a well capable of producing oil or gas in paying quantities on the date the lease expired, and there are no disputed facts, but only a dispute on the proper application of the law to those facts and legal interpretations, a hearing is not warranted in the case.

American Resources Management Corp., 40 IBLA 195 (Apr. 5, 1979)

The applicable regulation, 43 CFR 4.414 (1977), allows the Board some discretion in deciding whether to disregard the answer of an appellee who fails to file an answer within 30 days after service on him of the notice of appeal or statement of reasons and whose delay in filing is not waived under the provisions of 43 CFR 4.401(a) (1977).

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (May 10, 1979)

Where an applicant for an Alaska Native allotment was a minor at the time she alleges the initial use and occupancy of the land, but not so young as to preclude any possibility that she was then capable of doing so as an independent citizen in her own right to the potential exclusion of others, prior to rejection of her application on the basis of her youth BLM should provide notice and an opportunity for hearing.

Nellie Boswell Beecroft, 41 IBLA 70 (May 31, 1979)

Where Bureau of Land Management determines an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 *et seq*.

Frederick Phillips et al., 41 IBLA 169 (June 22, 1979)

Ella S. Sheldon et al., 42 IBLA 276 (Aug. 27, 1979)

Continued--

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

Elena Bartman, 43 IBLA 284 (Oct. 17, 1979)

Where the Bureau of Land Management (BLM) determines that an Alaska Native allotment application should be rejected in part because the Native did not use all of the land applied for, the BLM shall initiate a contest proceeding pursuant to 43 CFR 4.451 *et seq*.

Frank Rulland, 41 IBLA 207 (June 27, 1979) 86 I.D. 342

Broad discretion is committed to an agency in interpreting regulations. A party challenging an interpretation and the administrative application thereof must demonstrate that the interpretation is unreasonable and that the agency's application lacks a rational foundation.

Harry A. Zuckerman et al., 41 IBLA 372 (July 23, 1979)

"Person." Regulation 43 CFR 4.450-1 specifically gives persons with an adverse interest in land a right to contest the adverse claim. It does not depend on the applicability of the due process clause of the Constitution to either claimant. A State is a "person" within the meaning of this private contest regulation.

State of Alaska, 42 IBLA 1 (July 25, 1979)

Where BLM fails to show that there was service of a decision rejecting an Alaska Native allotment and the applicant learns of his rejection 4-1/2 years after rejection, the applicant may file a timely appeal within 30 days of notice of the decision.

Mailing to the Bureau of Indian Affairs a carbon copy of a decision rejecting an application for an Alaska Native allotment is not service upon the applicant so as to comply with 43 CFR 4.401.

Gust J. Reft, Sr., 42 IBLA 86 (Aug. 13, 1979)

Generally the Geological Survey may reconsider and modify or revoke its own decision in the absence of an appeal to the Board of Land Appeals. However, the filing of an appeal to the Board removes the matter from the jurisdiction of Survey pending disposition of the appeal.

Where Geological Survey and one of two parties to a compulsory unitization of two outer continental shelf oil and gas leases request a remand of a Survey decision for further consideration, and certain issues raised on appeal would appropriately be better first considered by Survey, the case will be remanded to Survey. In the circumstances, a request to stay implementation of Survey's prior decision may be granted by the Board unless and until Survey acts upon the request when it reconsiders the case.

Sun Oil Co., 42 IBLA 254 (Aug. 23, 1979)

Generally where BLM determines that an Alaska Native allotment application should be rejected because the use of the land by a minor child was not sufficiently established as an independent citizen in his own right, at least potentially exclusive of others, BLM shall issue a contest complaint pursuant to 43 CFR 4.451 *et seq*., and the guidelines set forth in *Donald Peters*, 26 IBLA 235, 83 I.D. 308 (1976).

Sarah A. Pence et al., 43 IBLA 266 (Oct. 15, 1979)

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.450 - 4.452-9.

Amy Tukrook Nukapigak, 44 IBLA 313 (Dec. 31, 1979)

ADJUDICATION

As only nonmineral lands may be appropriated under the law pertaining to headquarters sites, where the Geological Survey reports that a tract of entered land is nonmineral in character and the Bureau of Land Management therefore formally advises the claimant that the tract is subject to settlement or occupancy and officially acknowledges his claim, and the claimant thereafter complies fully with the law and applies for patent, a subsequent determination that the land is mineral in character will not vitiate the claim unless it is established that the original finding of nonmineral character was error, and that facts in existence at the time equitable title passed required a determination that the land was then mineral. Due process permits such action to be taken only after proper notice and opportunity for hearing.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

In order for an assertion of competitive interest to create a bar to the allowance of an application to modify an existing coal lease by the addition of contiguous land, the competitive interest asserted must be identifiable, substantial and genuine, and not merely speculative or casual.

Malcolm N. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

A Federal district court jury verdict in a suit to cancel desert land patents, that the entrymen and their purchaser under an illegal executory contract did not commit fraud against the United States, does not collaterally estop this Department from adjudicating a contest grounded on the illegal executory contract against the purchaser's own entry, because the legal standard applicable in the subsequent contest is different than that in the fraud action--a desert land entry can be subject to cancellation for acts that do not constitute fraud.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976)   83 I.D. 280

A delay in the adjudication of an application by officers or employees of the Department cannot create rights in Federal property contrary to law.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John C. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

Where a decision calls upon an applicant to supply certain documents and make certain showings in support of its mineral patent application or face rejection of the application, and on appeal it is established that all of the documents and evidence called for had already been furnished by the applicant and incorporated in the case record, where they were apparently overlooked by those who examined the application, the decision will be reversed.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977)
84 I.D. 990

Where the entryman makes admissions and submits evidence which establish conclusively that his failure to "prove up" his desert land entry during its initial term and two extensions was not the result of unavoidable delay, and that the failure was not without fault on his part, no further administrative proceedings are required prior to rejecting his application for a third extension.

Thomas D. Hickey, 34 IBLA 86 (Feb. 22, 1978)

Although a right-of-way granted under the Act of Jan. 21, 1895, was previously subject to cancellation by the authorized officer for non-use pursuant to 43 CFR 2802.2-3, the Federal Land Policy and Management Act of 1976 provides that suspension or termination of a right-of-way requires an appropriate administrative proceeding pursuant to 5 U.S.C. § 554 (1970), except where the right-of-way provides by its terms that it will terminate in such event.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

Where the Bureau of Land Management erroneously described a portion of the land listed in a notice to show cause why a grazing lease should not be canceled in part, the lessee is not denied due process where the land could not be confused with other lands in the grazing lease, where BLM corrected and explained its mistake in the subsequent decision, where no prejudice from the mistake is alleged or evident, and where the lessee has had every opportunity to present her arguments on the issues involved in the BLM actions.

If a grazing lease, canceled in part for loss of control of preference lands, expires by its terms prior to decision on the appeal of the cancellation and if the grazing lease is renewed solely because the appellate decision has not been rendered, with no consideration of the lessee's or conflicting preference rights, the Board of Land Appeals will consider the appeal of the cancellation as applicable to the renewed lease.

Evelyn Elsman, 35 IBLA 23 (May 5, 1978)

Where the evidence in an administrative appeal raises countervailing legal presumptions of equal probative worth, a factfinding hearing may be ordered pursuant to 43 CFR 4.415.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Where a mineral patent application is supported by information sufficient to permit a mineral examination of the claims, but not sufficient for the adjudicator to approve the application for patent, he may properly call on the applicant for supplemental evidence to support the application. However, if the claimant fails to submit it, the adjudicator may not penalize such failure by summary rejection of the application for reasons relating to disputed issues of fact without notice and an opportunity for hearing.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Where contestees deny the allegations in the complaint only as to 4 claims but not as to 15 other claims addressed in the complaint, the complaint will be taken as admitted as to the 15 claims not addressed in the answer to the complaint.

United States v. Jerry Prock et al., 39 IBLA 148 (Jan. 29, 1979)

The interpretation of an existing regulation by this Board to determine its applicability to the facts at hand does not constitute rulemaking by the Board.

H. R. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

In order to sustain a charge that an administrative law judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

United States v. Leroy S. Johnson et al., 39 IBLA 337 (Feb. 28, 1979)

State of Alaska selection applications should not be rejected because of conflicts with Native allotment applications which are to be approved without first affording the State notice of such action to be taken and an opportunity to contest the conflicting claims if it desires.

State of Alaska et al., 41 IBLA 315 (July 11, 1979)
86 I.D. 361

State of Alaska applications for prior-filed airport conveyances of land needed for an existing airport should not be rejected because of conflicts with Native allotment applications which are to be approved without first affording the State notice of such action to be taken and an opportunity to contest the conflicting claims if it desires.

State of Alaska, 42 IBLA 1 (July 25, 1979)

Where, on appeal, a mining claimant alleges that he timely mailed the affidavits of assessment work to the proper BLM office but there is no evidence to indicate they were ever received, the claimant must bear the consequences of the loss and his inability to prove his allegation that they may have been received by the Bureau and subsequently lost.

Amanda Mining & Manufacturing Ass'n., 42 IBLA 144 (Aug. 16, 1979)

Continued--

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Roger Kuhn, 43 IBLA 182 (Sept. 28, 1979)

Where an application to acquire Federal land is rejected by BLM for the reason that the applicant's own declaration of material facts stated in his application demonstrate conclusively that he is not entitled to the land as a matter of law, an effort on appeal to revise, amend, or deny the facts will not be considered absent a persuasive explanation of error in the application.

The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen acting for himself, and not as a dependent child visiting and using the land in the company of his parents. Where the allotment applicant admits that this was his only presence on the land prior to its segregation from the operation of public land laws, the allotment application is properly rejected.

Where, even if all of the allegations of material fact made by an applicant for a Native allotment are accepted as true, allowance of the application is barred as a matter of law, the rule of *Pence* v. *Kleppe*, 529 F.2d 135 (9th Cir. 1976), is not applicable, and the application is properly rejected without a hearing.

Andrew Petla, 43 IBLA 186 (Oct. 5, 1979)

Where a protest, with accompanying supporting evidence, alleges that the oil and gas lease offer drawn first in a simultaneous filing-drawing procedure violated the regulations because a party in interest was not disclosed and there was a multiple filing, the Bureau of Land Management should first afford the drawee an opportunity to respond to the protest before rejecting the offer based on facts alleged in the protest. The error, however, is rendered harmless where on appeal the offeror has full opportunity to make factual submissions and respond to the allegations.

H. J. Enevoldsen, 44 IBLA 70 (Nov. 20, 1979)
86 I.D. 643

Where determination of issues of fact turn upon weight to be given to conflicting testimony, findings of fact concerning testimony are required to be made by the initial trier of fact.

Estate of Joseph Caddo a.k.a. James Joseph Caddo and Jim Butler, 7 IBIA 286 (Nov. 28, 1979)

Where a mineral patent application is supported by a mineral examination of the claim which finds a valid discovery and recommends issuance of a patent for a portion of the claim, the BLM may not summarily reject the application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Calcium Co., 44 IBLA 289 (Dec. 26, 1979)

ADMINISTRATIVE LAW JUDGES

While a mining contest is within the jurisdiction of an administrative law judge, he may reopen the hearing for the production of further evidence before he makes his decision.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE LAW JUDGES--Continued

An administrative law judge has a duty to conduct a hearing in such a manner that all available relevant facts in a mining contest will be adduced. He should take special care to do so where a party is without counsel and there is confusion concerning the status of purported tendered evidence.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

Upon appeal from a decision of an administrative law judge, the Board of Land Appeals may make all findings of fact and conclusions of law based upon the record just as though it were making the decision in the first instance.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an administrative law judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977)
84 I.D. 475

A mining claim will be declared null and void where the Board's de novo review of the evidence submitted at a hearing, held in accordance with the provisions of the Administrative Procedure Act and presided over by an administrative law judge qualified under the Act, establishes that the claimant has not satisfied the requirements of discovery, and there was no error in the conduct of the proceeding.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

It requires a substantial showing of bias to disqualify a hearing officer in administrative proceedings or to justify a charge that the hearing was unfair.

United States v. Richard H. Kingdon and Edith F. Kingdon, 36 IBLA 11 (June 27, 1978)

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

United States v. John Gavanich, 36 IBLA 111 (July 14, 1978)

Administrative law judge properly dismissed without a hearing a private homestead entry contest in which complaint failed to allege corroborated facts which, if proved, would provide sufficient basis for cancellation of entry.

Ernest C. Lamb v. Richard R. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE LAW JUDGES--Continued

The administrative law judge properly exercised his authority to control the hearings where he controlled the manner of examination but did not limit the scope of testimony of witness, and where he permitted adequate time for submission of proposed findings by the parties prior to issuance of the final order.

Estate of Edward Lockwood, Jr., 7 IBIA 271 (Nov. 20, 1979)

An administrative law judge in rendering a decision need not make a separate ruling on each finding of fact and conclusion of law. It is sufficient if the decision summarizes the controlling principles of law and the testimony of witnesses relative thereto and explains why appellants' evidence was insufficient to meet the legal test for a discovery of valuable mineral.

United States v. Jon Zimmers and Claire Kelly, 44 IBLA 142 (Nov. 30, 1979)

When a party to an Indian probate proceeding appears without an attorney, the administrative law judge has a duty not to be a mere umpire, but to see that all relevant facts are developed.

Where a party to an Indian probate proceeding was not represented by counsel and was obviously unprepared for proper presentation of testimony and ignorant of significance of the facts, the administrative law judge had the duty to see that all relevant facts and circumstances, both favorable and unfavorable to the parties, were brought out.

Estate of Joe (Jose) Elvino Juancho, 7 IBIA 294 (Dec. 4, 1979)

ADMINISTRATIVE PROCEDURE ACT

The ultimate findings and decision of the administrative law judge adopted by the Commissioner of Indian Affairs will not be set aside upon administrative review where they are supported by substantial evidence.

Administrative Appeal of Mary Ann Torsseh Combs (Flathead Allottee No. 1648) v. Commissioner of Indian Affairs, 4 IBIA 27 (Apr. 28, 1975) 82 I.D. 164

A mining claim is a claim to property which may not be declared invalid except in accordance with due process of law. Due process consists of proper notice and opportunity for an agency hearing in accordance with the Administrative Procedure Act, and it suffices if the claimant is properly notified and afforded the opportunity to be heard. But there is no requirement that a hearing be held where the contestee fails to avail himself of the opportunity for a hearing within the time provided.

United States v. James R. and Sammy R. Ragsdale, 20 IBLA 348 (June 11, 1975)

The ultimate findings, conclusions and order of the administrative law judge will not be set aside upon administrative review where they are supported by substantial evidence.

Estate of Evans Ingatuah, 4 IBIA 103 (July 29, 1975)
82 I.D. 352

Where the answer to a mining contest complaint denying the charges is timely filed by one contestee, but is untimely filed by all other contestees, the charges as to those contestees filing untimely answers will be taken as admitted and their interests in the mining claims will be declared null and void. The contestee who filed a timely answer is entitled to a hearing as to the validity of the claims.

United States v. Albert S. Hunter et al., 22 IBLA 28 (Sept. 10, 1975)

The Secretarial instruction of Oct. 18, 1973, which mandates a showing by a Native allotment applicant of 5 years of occupancy prior to a withdrawal of the land, was not required to be published as rulemaking since 5 U.S.C. § 553(a)(2) (1970) exempts from its ambit matters pertaining to public property.

Heirs of Dorothy Gordon, 22 IBLA 213 (Oct. 15, 1975)

The Secretarial guideline of Oct. 18, 1973, that a Native allotment application should be rejected when the applicant fails to show 5 years of use and occupancy prior to a withdrawal of the land: (a) is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970); and (b) is a proper exercise of the discretion vested in the Secretary by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), the application of which does not violate any right of the allotment applicant.

Herman Joseph (On Reconsideration), 22 IBLA 266 (Oct. 30, 1975)

A cattle trespass decision rendered by an administrative law judge may be set aside and remanded where the decision does not include a statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion as required for initial decisions under 5 U.S.C. § 557 (1970) and 43 CFR 4.475.

United States v. John J. Casey, 22 IBLA 358 (Nov. 14, 1975) 82 I.D. 546

Where the answer to a mining contest complaint denying the charges is not timely filed, the charges will be deemed admitted and the contest will be decided without a hearing. 43 CFR 4.450-7(a).

United States v. Edison T. Schaefer, 29 IBLA 84 (Feb. 23, 1977)

Where an administrative law judge's decision contains a ruling, in a single sentence, on all of the proposed findings and conclusions submitted by a party to a hearing and the ruling on each finding and conclusion is clear, there is no requirement that the judge rule separately as to each of the proposed findings and conclusions.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an administrative law judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

Under the circumstances of this case, appellant's paternity is not an issue cognizable by the Department in probating her mother's will. In accordance with sec. 8(b) of the Administrative Procedure Act findings should be limited to issues necessary to the disposition of a case.

A full and true disclosure of the facts was denied when only the presiding judge was permitted to ask questions of a crucial witness. This procedure violated sec. 7(c) of the Administrative Procedure Act.

Estate of Rena Marie Edge, 7 IBIA 53 (Apr. 25, 1978)

The Department of the Interior is lawfully empowered to initiate a contest pursuant to the Administrative Procedure Act to determine the validity of unpatented mining claims. This procedure makes no provision for 1) trial by jury, 2) advice to the contestant concerning his constitutional rights, 3) compensation to the contestant for the value of the claim if it is found to be invalid, or 4) appointment by the Department of qualified counsel to represent the contestant; and this procedure does not violate constitutional guarantees of due process, the General Mining Law, or the Administrative Procedure Act. Presentation of the contestant's case by counsel employed by the Forest Service in appropriate cases is permissible, and Federal employees may testify as witnesses, and may conduct examinations and secure mineral samples on unpatented mining claims without a search warrant.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

Where a qualifying discovery of mineral has been made by a permittee during the term of a permit, a coal preference right lease application need not be rejected because it was filed after the permit expired.

Thermal Energy Co. et al., 36 IBLA 334 (Aug. 28, 1978)

In an administrative hearing to determine the validity of a mining claim, the requirements of due process are satisfied when notice and opportunity for an impartial hearing are provided in accordance with the Administrative Procedure Act. 5 U.S.C. § 551 *et seq.* (1976).

The procedures followed by the Department of the Interior in the initiation, prosecution, and deciding of mining contest cases are in full compliance with the Administrative Procedure Act.

United States v. Paul P. Fisher and Buel E. Fisher, 37 IBLA 80 (Sept. 22, 1978)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE PROCEDURE ACT--Continued

A delay in taking action on an application for extension of a coal prospecting permit while the Secretary formulates a new leasing policy does not violate the Administrative Procedure Act, 5 U.S.C. § 555(b) (1976), nor does it constitute an abuse of discretion which would create any rights not authorized by law. No hearing is required when the facts of a case are not in dispute and the only issues are questions of law.

Sec. 9(b) of the Administrative Procedure Act, *as amended*, 5 U.S.C. § 558(c) (1976), does not apply to coal prospecting permit extension applications because the prospecting is not an "activity of a continuing nature" within the meaning of the statute. As the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 30 U.S.C. § 201 (1976), removed the Secretary of the Interior's discretion to grant extensions, applications for preference right leases filed after expiration of the initial 2-year permit term, and during pendency of extension applications, cannot be issued.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

Neither a Recreation and Public Purposes Act classification nor a withdrawal is a rule or regulation within the ambit of the Secretarial policy of Apr. 27, 1971, which provides for utilization of the public participation procedures of 5 U.S.C. § 553 (1976).

Mining claims purportedly located on land not available for such location confer no property right upon the locator, and may be declared null and void ab initio without a hearing under 5 U.S.C. § 554 *et seq.* (1976).

Delmer McLean et al., 40 IBLA 34 (Mar. 15, 1979)

Whether the issuance of PLO No. 5448, prohibiting oil and gas leasing in Alaska, without prior proposed rulemaking is violative of the Administrative Procedure Act or of the Alaska Native Claims Settlement Act need not be decided; by such issuance the Secretary has enunciated a policy of rejecting mineral lease applications well within his discretionary authority.

Bristol Bay Native Corp., 41 IBLA 85 (June 4, 1979)

The Board of Indian Appeals has authority to reverse findings of fact by an administrative law judge even when not clearly in error. But an administrative law judge will not be reversed when his decision turns upon findings concerning credibility, which in turn are based upon the demeanor of witnesses, and such findings are supported by substantial evidence.

Estate of Edward Lockwood, Jr., 7 IBIA 271 (Nov. 20, 1979)

ADMINISTRATIVE REVIEW

The ultimate findings and decision of the administrative law judge adopted by the Commissioner of Indian Affairs will not be set aside upon administrative review where they are supported by substantial evidence.

Administrative Appeal of Mary Ann Topsseh Combs (Flathead Allottee No. 1648) v. Commissioner of Indian Affairs, 4 IBIA 27 (Apr. 28, 1975) 82 I.D. 184

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

The ultimate findings, conclusions and order of the administrative law judge will not be set aside upon administrative review where they are supported by substantial evidence.

Estate of Evans Ipgatuah, 4 IBIA 103 (July 29, 1975)
82 I.D. 352

A decision by BLM to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

Southern Union Production Co., 27 IBLA 54 (Sept. 23, 1976)

California Geothermal, Inc., 37 IBLA 172 (Oct. 10, 1978)

Bureau of Land Management Instruction Memorandum No. 77-37 outlined a general policy for the assessment of additional rental on oil and gas lease offers pending when the rental rate was increased by regulation, but left to the discretion of the State Offices the particular implementing procedures. Procedures used by a State Office which may be different from other State Offices, but which do not prejudice the offerors' right to receive oil and gas leases if leases are issued on the lands applied for, are not arbitrary and capricious as to require reversal of the decisions assessing additional rental.

E. R. Gaither et al., 32 IBLA 106 (Sept. 12, 1977)

Where the Bureau of Land Management issued a decision notifying a successful lease offeror of the increased advanced rental rate from $.50 to $1 per acre as per the regulation change in 43 CFR 3103.3-2, effective Feb. 1, 1977, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board and upon our affirmation, appellant now will be given 15 days to comply with the original requirements before his offer is rejected.

Paul Landis, 32 IBLA 374 (Oct. 31, 1977)

Where the Bureau of Land Management issued a decision notifying a successful drawee in the simultaneous oil and gas filing program of the increased advance rental rate from 50 cents to $1 per acre pursuant to a regulation change effective Feb. 1, 1977, 43 CFR 3103.3-2, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board. Payment of the required increased rental during the appeal period is deemed timely and a lease may issue.

George Gabriel, 33 IBLA 44 (Nov. 25, 1977)

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a regulation of this Department.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer was not proper and must be rejected, the applicant may not thereafter appeal the matter to this Board merely because the Bureau of Land Management, in implementing the Board's decision, mistakenly advised him that he had the right to such an appeal. The matter is res judicata, and the subsequent appeal must be dismissed.

Where the Board of Land Appeals, by a previous decision, has held that a particular oil and gas lease offer must be rejected, and the rejected applicant files suit for judicial review of that decision in the United States District Court, and also files a contemporaneous appeal to the Board from a BLM decision implementing the Board's decision, the Board will defer to the Court's jurisdiction and make no decision on the merits of the appeal, which is subject to summary dismissal by the Board.

Donald W. Cover (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that certain coal prospecting permits have terminated and that no preference right to a coal lease is attached to any of them, an unapproved assignee of the permits may not thereafter appeal the matter to this Board following Bureau of Land Management notification to the permittees of this Board's decision. The matter is res judicata and such subsequent appeal must be dismissed, absent compelling legal or equitable considerations.

Peabody Coal Co., 36 IBLA 242 (Aug. 14, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer may properly be rejected for the reason that title to the lands involved was uncertain, and a new lease offer for the same lands is again rejected for the same reason, the matter is res judicata, and the subsequent appeal is properly dismissed.

N. L. Industries, Inc., 37 IBLA 335 (Oct. 26, 1978)

Where the holder of an oil and gas lease on the Outer Continental Shelf has filed a suit in a Federal district court to recover certain royalties paid under his lease, the Board of Land Appeals will affirm a decision of the Director, Geological Survey, holding in abeyance the lessee's request for a refund while the suit is pending.

Tenneco Oil Co., 41 IBLA 195 (June 22, 1979)

A decision by the Bureau of Land Management canceling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

Blue Star, Inc., Atomic Western, Inc., Fremont Energy Corp., Ivor Adair, 41 IBLA 333 (July 11, 1979)

The right to administrative relief is a privilege afforded by law to persons who consider themselves interested or aggrieved. The burden is upon the interested person to act affirmatively to protect perceived interests. Such a person is not entitled to wait until all other interested persons act, to speculate on the outcome, and then, if the decision is adverse, to seek to reopen the matter on his or her own behalf, when that person has been afforded notice of all the proceedings.

Western Slope Gas Co. (On Reconsideration), 43 IBLA 259 (Oct. 15, 1979)

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

United States v. Elbert Gassaway, 43 IBLA 382 (Oct. 31, 1979)

BURDEN OF PROOF

When the Government contests a mining claim it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

When a Government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made; the Government's mineral examiner is not obliged to explore beyond the current workings of a mining claimant in attempting to verify a discovery.

United States v. Herbert Clark, 18 IBLA 368 (Jan. 30, 1975)

A determination by a district manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

John T. Murtha, 19 IBLA 97 (Mar. 4, 1975)

Kaser Brothers, 24 IBLA 265 (Mar. 29, 1976)

In a mining contest a mining claimant is the true proponent under the Administrative Procedure Act, 5 U.S.C. § 556(d) (1970), of a rule or order that he has complied with the mining laws, and he has the ultimate burden of proof--the risk of nonpersuasion--to show by a preponderance of the evidence that there is a valuable mineral deposit on the claim, when the Government has made a prima facie case of lack of such a discovery.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Charles J. MacIver et al., 20 IBLA 352 (June 11, 1975)

United States v. Carl Pellmey, 25 IBLA 50 (May 14, 1976)

United States v. Russ Knecht, 39 IBLA 8 (Jan. 8, 1979)

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. C. V. Hallenbeck et al., 21 IBLA 296 (Aug. 11, 1975)

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

United States v. Wesley C. Miles, Sr., 36 IBLA 213 (Aug. 3, 1978)

When the Government contests a mining claim and establishes a prima facie case that contestee has not made a discovery of a locatable mineral deposit, the burden devolves on contestee to establish by a preponderance of the evidence that the claim has been validated by the discovery of a locatable mineral deposit.

A bog iron ore deposit does not meet the prudent man/marketability test where the evidence shows that contestee could only develop the iron deposit for sale for metallurgical uses after further exploration to establish a higher grade or greater tonnage of ore, or upon future favorable developments in the iron ore market.

United States v. Theresa P. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform

discovery work for claimants or to explore beyond a claimant's workings.

United States v. Ruth Arcand et al., 23 IBLA 226 (Jan. 9, 1976)

United States v. Edward T. McHenry et al., 43 IBLA 122 (Sept. 26, 1979)

An applicant under the Color of Title Act, 43 U.S.C. § 1068 (1970), has the burden to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

When the Government contests a mining claim, it has assumed the burden of presenting a prima facie case that the claim is invalid; when it has done so, the burden then devolves on the mining claimant to prove by a preponderance of the evidence that the claim is valid.

United States v. Robert W. Deal, 23 IBLA 378 (Feb. 4, 1976)

Applications for phosphate prospecting permits are properly rejected by the Bureau of Land Management upon the basis of a determination by the Geological Survey that the lands applied for contain workable deposits of phosphate thus making the lands subject to the leasing provisions rather than the prospecting provisions of the Mineral Leasing Act. A review of the technical data relied upon by the Geological Survey in making its determination is not required where no evidence is submitted on appeal demonstrating error in that determination.

William F. Martin, 24 IBLA 271 (Mar. 30, 1976)

When a Government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made.

United States v. John M. Tappan, Jr., et al., 25 IBLA 1 (May 5, 1976)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit.

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

United States v. Emma Elizabeth Conner, and Walter T. Nolte, as the Heirs of D. W. Speer, a Last Known Director of the Arlington Gold Mining Co. (Contestee), 31 IBLA 173 (July 5, 1977)

When the Government contests a mining claim, by practice it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Likewise, a millsite claimant has the burden of establishing the validity of his claim by a preponderance of the evidence.

A prima facie case of lack of discovery within a mining claim is established when a Government mineral examiner testified that he has examined the claim and found mineralization insufficient to support a finding of discovery.

United States v. Alois A. Dietemann and Doris E. L. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

In a Government contest of the validity of a mining claim it is the claimants who are the true proponents of a rule or order, namely, that they have complied with the mining laws and have qualified to receive fee title to the land.

United States v. J. R. Osborne et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

One challenging the accuracy of an appraisal of water based on fair market value must show by substantial evidence the nature of the alleged error; where the appraisal has been conducted in accordance with generally accepted appraisal principles, allegations of error unsupported by evidence will be given little weight.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977)
84 I.D. 87

When the Government has presented a prima facie case of lack of discovery of a valuable mineral deposit on a mining claim, the mining claimant then has the burden of establishing by a preponderance of the evidence that the discovery test has been met. Consequently, the ultimate burden of proving discovery is always upon the mining claimant.

United States v. George J. Hunt and A. H. Goodwin, 29 IBLA 86 (Feb. 23, 1977)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

A lode mining claim for barite is properly declared null and void in the absence of a showing of a discovery on the claim of a deposit of barite which would warrant a prudent man in further expending his labor and means in the reasonable expectation of developing a valuable mine. Evidence of mineralization which may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

Once the Government has established in a mining claim contest a prima facie case that the claims are not valid for lack of discovery, the burden shifts to the contestee to prove the discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Howard S. McKenzie, 29 IBLA 270 (Mar. 28, 1977)

In a Government contest challenging the validity of mining claims located for a clay-type material, an adequate prima facie case is established where there are expert witness opinions that the deposit is only a common clay or shale and it cannot meet refractory standards. The contestees then must go forward with evidence to rebut the Government's case with a preponderance of the evidence.

United States v. Thomas J. Peck et al., 29 IBLA 357 (Mar. 31, 1977)
84 I.D. 137

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

United States v. Richard R. Wells, 30 IBLA 333 (June 7, 1977)

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

Andrew J. Van Derpoel et al., 33 IBLA 248 (Jan. 5, 1978)

United States v. Clark J. Guild et al., 34 IBLA 387 (May 3, 1978)

United States v. Don Lee Seto and Pauline Seto, 35 IBLA 4 (May 3, 1978)

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

United States v. Catherine E. Gay, 36 IBLA 148 (July 31, 1978)

United States v. John A. Cooley, 43 IBLA 276 (Oct. 15, 1979)

Although the Government has assumed the burden of proof in mining claim contests of presenting a prima facie case of lack of discovery, once it has done so, the burden shifts to the claimant to prove by a preponderance of the evidence the discovery of a valuable mineral deposit. A prima facie case is established when

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

a Government mineral examiner testifies that she examined the claim and could find no evidence showing the discovery of a valuable mineral deposit.

United States v. Gwendolyn McClurg et al., 31 IBLA 8 (June 15, 1977)

Where the Government contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Where a Government mineral examiner testifies that he extensively examined the claims and workings thereon, and had assayed numerous samples taken from the claims but found no evidence of a valuable mineral deposit that would support a discovery, a prima facie case of lack of a mineral discovery has been made.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to such location, the Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Where the expert witnesses called by the Government testify that prior to July 23, 1955, there was no profitable market for common variety minerals from the subject claims and that it would have been economic folly to undertake the development a mine thereon, a prima facie case of invalidity has been made. Thereafter, upon the failure of the claimant to prove the contrary by a preponderance of credible evidence, a determination that the claims are invalid is obligatory.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

A prima facie case of lack of discovery of a valuable mineral deposit is established when a mineral examiner testifies for the United States that he examined each claim and could find no evidence showing the discovery of a valuable mineral deposit.

When a mineral examiner testifies for the United States that a discovery has not been made on a mining claim, his opinion must be based on a proper factual foundation. However, he is not required to perform discovery work, to explore or sample beyond a claimant's workings, or to excavate or rehabilitate any purportedly mineralized area which is concealed by overburden or is otherwise difficult of access. Under proper circumstances, the testimony of the mineral examiner may establish a prima facie case of lack of discovery even though he was not physically on each mining claim.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Where the claimant presents evidence of returns which are so meager that they will not attract the labor and means of a person of ordinary prudence, he has failed to prove by a preponderance of the evidence that his claim is valid, and it is properly declared null and void.

United States v. Joseph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of validity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. Florence J. Mattox, 36 IBLA 171 (July 31, 1978)

United States v. Emmett C. Harder, 42 IBLA 206 (Aug. 22, 1979)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

In a mining claim contest, no weight will be given to claimant's allegation that the Government's mineral examiner failed to sample the discovery point or the best mineral showings, where the claimant was invited to indicate his discovery to the examiner and failed to do so, and where he also failed to introduce convincing evidence of his own that a discovery had been made.

United States v. Larry Joseph Tims, 36 IBLA 316 (Aug. 23, 1978)

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

In mining claim contest, Government must only go forward with evidence to establish prima facie case of no discovery of valuable mineral deposits, and burden then shifts to mining claimant to prove by preponderance of evidence that his claim is valid.

Government has established prima facie case when its mineral examiner testifies that he has examined mining claims in issue and found mineral values insufficient to support finding of discovery of valuable deposits.

United States v. Michael P. Marion, 37 IBLA 68 (Sept. 18, 1978)

In challenging the Government resurvey, appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of proving a discovery onto the mining claimant, when an expert witness testifies that he has examined the claim and has found the mineral values insufficient to support a finding of discovery.

United States v. John S. Porter, 37 IBLA 313 (Oct. 25, 1978)

When the Government contests a mining claim on a charge of no discovery it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. The burden then shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

United States v. Loren E. Burns et al., 38 IBLA 97 (Nov. 20, 1978)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

Once the Government has established a prima facie case that no discovery of a valuable mineral deposit has been made within a mining claim, the burden of proof shifts to the contestee to establish by a preponderance of the evidence the existence of a discovery.

United States v. Jack C. Harris, Jill L. Harris, 38 IBLA 137 (Nov. 29, 1978)

Applicant has burden of establishing entitlement to headquarters site claim, and must demonstrate that he has complied with statute and regulations.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

United States v. Henry Jay Bush, 40 IBLA 106 (Mar. 27, 1979)

Where arguably conflicting uses of the public lands are at issue and the matter has been committed to the discretion of the BLM, the Board will uphold the decision of the BLM resolving the conflict unless appellant has shown that the BLM did not adequately consider all of the factors involved, including whether less stringent alternatives would accomplish the intended purpose, or that there is sufficient reason to change the result.

California Ass'n of Four-Wheel Drive Clubs et al., 38 IBLA 361 (Dec. 29, 1978)

The burden of proving a valid color of title claim is on the claimant. Where it cannot be said from the evidence presented that the grantors and grantees in the claimant's chain of title acquired a parcel of land with the bona fide belief that the parcel included all the land claimed, the color of title application must be denied.

Pablo M. Taylor (On Reconsideration after Hearing), 39 IBLA 15 (Jan. 11, 1979) 86 I.D. 22

A district manager's decision reached in the exercise of administrative discretion pursuant to the Taylor Grazing Act of 1934 may be regarded as arbitrary or capricious only where it is not supportable on any rational basis and the burden is on the appellant to show by substantial evidence that the decision is improper. A district manager's decision not to reissue a grazing lease for a certain area until that area is fenced and to reduce appellant's AUM's accordingly rests on a rational basis where the facts show that this unfenced area adjoins the bombing range and grazing thereon could result in trespass on the bombing range, inconsistent with the use of the range.

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

In a contest proceeding the Government has the burden of establishing a prima facie case of noncompliance with the requirements for trade and manufacturing, and headquarters sites. The burden then shifts to the applicant to show by a preponderance of the evidence that he has used, occupied, and improved the sites for trade, manufacture, or other productive industry.

United States v. Jack Zessy Boyd, Jr., 39 IBLA 321 (Feb. 27, 1979)

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of going forward, when an expert witness testified that he has examined the claim and has found the mineral value insufficient to support a finding of discovery.

United States v. Tempest Mining Co., 40 IBLA 297 (Apr. 27, 1979)

Broad discretion is committed to an agency in interpreting regulations. A party challenging an interpretation and the administrative application thereof must demonstrate that the interpretation is unreasonable and that the agency's application lacks a rational foundation.

Harry A. Zuckerman et al., 41 IBLA 372 (July 23, 1979)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

The entire evidentiary record in a mining contest is considered and if evidence presented by a contestee is damaging to the contestee's case it may be used against the contestee regardless of any deficiencies in the Government's presentation. Therefore, regardless of whether the Government established a prima facie case of lack of discovery, if the entire record establishes that a discovery was not made on a claim it is properly declared null and void.

United States v. William Lavon Chappell et al., 42 IBLA 74 (Aug. 13, 1979)

The burden of establishing a valid color of title claim is on the claimant.

Joe I. Sanchez and Celina V. Sanchez, et al., 42 IBLA 176 (Aug. 22, 1979)

In review proceedings of notices of violation and cessation orders, the burden of going forward to establish a prima facie case rests with OSM and the ultimate burden of persuasion rests with the applicant for review.

Dean Trucking Co., Inc., 1 IBSMA 229 (Sept. 11, 1979)
86 I.D. 437

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

United States v. Ted G. Ax, 43 IBLA 146 (Sept. 28, 1979)

United States v. Ralph Page et al., 43 IBLA 390 (Oct. 31, 1979)

In a contest proceeding the Government has the burden of establishing a prima facie case of noncompliance with the requirements for trade and manufacturing sites. The burden then shifts to the applicant to show by a preponderance of the evidence that he used, occupied, and improved the site for trade, manufacture, or other productive industry.

United States v. Graham Keith Ward, 43 IBLA 333 (Oct. 29, 1979)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

United States v. John D. Burt et al., 43 IBLA 363 (Oct. 29, 1979)

A Government mineral examiner in evaluating a mining claim is not required to perform discovery work, to explore or sample beyond a claimant's workings and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner. While it is true that under proper circumstances, the testimony of the mineral examiner may establish a prima facie case of lack of discovery even though he was not physically on each mining claim, in the case at bar we need not decide whether a prima facie case was made by contestant since the totality of the evidence establishes invalidity of the claims.

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

The Board properly adopts a decision of an administrative law judge holding mining claims null and void for lack of discovery of certain minerals, *i.e.*, gold, silver, iron, titanium, feldspar, mica, silica refractory clay, stoneware clay, refractory sand and glass, where nondiscovery is established by the totality of the evidence.

United States v. Jon Zimmers and Claire Kelly, 44 IBLA 142 (Nov. 30, 1979)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

When the Government contests a mining claim, located on land withdrawn from mineral entry, the burden of presenting a prima facie case is satisfied by the testimony of a well qualified mineral examiner that he has examined the exposed workings on a claim without finding sufficient mineral values to support a conclusion there was a discovery of a valuable mineral deposit either at the time of the withdrawal or at the time of his inspections.

United States v. Cecilia Puccinelli, 44 IBLA 266 (Dec. 19, 1979)

When the Government contests a mining claim on a charge of no discovery of a valuable mineral deposit it assumes the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Knox-Arizona Corp., 44 IBLA 297 (Dec. 31, 1979)

DECISIONS

A cattle trespass decision rendered by an administrative law judge may be set aside and remanded where the decision does not include a statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion as required for initial decisions under 5 U.S.C. § 557 (1970) and 43 CFR 4.475.

Where a grazing district cattle trespass complaint refers to previous trespasses by the base property owner, he is served with the complaint, and the record indicates he intervened at the hearing thereon but the decision issued makes no mention thereof, the decision appealed from may be set aside and remanded for clarification.

United States v. John J. Casey, 22 IBLA 358 (Nov. 14, 1975)
82 I.D. 546

When the Bureau of Land Management rejects geothermal lease offers on the mistaken basis that the lands embraced within the offers are situated within a particular critical natural area excluded from leasing, but in fact the lease offers are for lands not within that critical natural area but may be in another, the cases must be remanded for further consideration because the decisions fail to disclose a proper basis for rejection of the lease offers.

Kirk Greene, 24 IBLA 113 (Mar. 1, 1976)

When the Bureau of Land Management rejects geothermal lease offers on the basis that the lands embraced within the offers are situated within a critical natural area excluded from leasing, but the record indicates the basis for rejection may be that the lands applied for are associated with historic trails where leasing activity has been approved subject to protective stipulations, the decisions will be set aside and the cases remanded for further clarification and consideration by the Bureau to determine whether the lands should be leased subject to protective stipulations.

Christian F. Murer, 24 IBLA 383 (Apr. 29, 1976)

ADMINISTRATIVE PROCEDURE--Continued

DECISIONS--Continued

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Bureau of Land Management v. Russ Babcock, 32 IBLA 174 (Sept. 15, 1977)
84 I.D. 475

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John D. Keischer, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

A mining claim will be declared null and void where the Board's de novo review of the evidence submitted at a hearing, held in accordance with the provisions of the Administrative Procedure Act and presided over by an administrative law judge qualified under the Act, establishes that the claimant has not satisfied the requirements of discovery, and there was no error in the conduct of the proceeding.

United States v. Ernest F. Eiven and Richard J. I. Anderson, 32 IBLA 361 (Oct. 25, 1977)

Where a decision calls upon an applicant to supply certain documents and make certain showings in support of its mineral patent application or face rejection of the application, and on appeal it is established that all of the documents and evidence called for had already been furnished by the applicant and incorporated in the case record, where they were apparently overlooked by those who examined the application, the decision will be reversed.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977)
84 I.D. 990

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

An administrative law judge in rendering a decision need not make a separate ruling on each finding of fact and conclusion of law. It is sufficient if the decision summarizes the controlling principles of law and the testimony of witnesses relative thereto and explains why appellants' evidence was insufficient to meet the legal test for a discovery of valuable mineral.

United States v. Jon Zimmers and Claire Kelly, 44 IBLA 142 (Nov. 30, 1979)

HEARING EXAMINERS

In order to sustain a charge that an administrative law judge should be disqualified or his decision set aside for bias, a substantial showing of personal bias must be made.

United States v. Paul P. Fisher and Buel E. Fisher, 37 IBLA 80 (Sept. 22, 1978)

In order to sustain a charge that an administrative law judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

United States v. Leroy S. Johnson et al., 39 IBLA 337 (Feb. 28, 1979)

HEARINGS

When one whose application for patent for a mining claim has been rejected requests a hearing to present evidence on the controlling issues of fact involved in the rejection of the application, such request must be granted.

Estate of Arthur C. W. Bowen (Deceased), 18 IBLA 379 (Jan. 30, 1975)

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other essential issues to determine whether the application may be allowed.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

Where determination of issues of fact are appropriate and necessary for the exercise of Secretarial discretion, the Hearings Division of the Office of Hearings and Appeals will schedule and hold a hearing at the Secretary's direction to serve as a basis for findings of fact.

Administrative Appeal of Hannah Finnesand, A Native Alaska Indian v. Commissioner of Indian Affairs, 3 IBIA 263 (Feb. 25, 1975)

Where at a hearing held pursuant to sec. 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

HEARINGS--Continued

A motion for remand of a mining claim contest for further hearing on the grounds of prejudicial surprise, based upon Government counsel's failure to supplement interrogatory answers listing witnesses and exhibits as ordered in lieu of prehearing conference, will be denied where contestee's counsel ignored repeated offers of continuance made at various stages of the hearing.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

A request for a hearing in connection with an appeal will not be granted where undisputed facts are of record, and the determination rests on legal conclusions based on such facts.

Concho Petroleum Co. and J. C. Karcher, 22 IBLA 139 (Sept. 26, 1975)

A headquarters site claim located prior to a withdrawal may be declared invalid by the Bureau of Land Management without awaiting the filing of a patent application where there has been insufficient compliance with the law to appropriate the land before the withdrawal. However, the Bureau should follow appropriate procedures. These should include giving notice to the claimant to show cause why the claim should not be invalidated where the notice of location does not show adequate compliance with the law sufficient to preclude the withdrawal, and initiating a contest and affording an opportunity for a hearing where there are disputed facts on the compliance with the law.

Richard I. Pope, 22 IBLA 374 (Nov. 17, 1975)

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without opportunity for hearing.

Nathern Lewis Stacy, 23 IBLA 166 (Dec. 24, 1975)

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and alleges that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the Bureau of Land Management to hold that the location notice was unacceptable for recordation, and the claim may only be canceled following notice to the claimant and an opportunity to demonstrate the establishment of a valid existing homesite claim prior to the withdrawal.

Steven E. Reese, 24 IBLA 23 (Feb. 11, 1976)

Evidence offered on appeal from an initial decision by an administrative law judge after a hearing in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

A further hearing may be ordered in a mining contest where the record is unsatisfactorily confusing and conflicting on the issue of quantity of minerals to satisfy the discovery test, a request for the rehearing has been made with an offer of proof which tends to show a new hearing might result in a different finding, and there has been no objection to the request.

United States v. George R. Edeline et al., 24 IBLA 34 (Feb. 17, 1976)

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1970), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corp., 25 IBLA 153 (June 10, 1976)

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing pursuant to the Administrative Procedure Act are required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

David Loring Gamble, Darrel Douglas, 26 IBLA 249 (Aug. 18, 1976)

The regulations do not provide for hearings as a matter of right on trespass violations involving a sec. 15 grazing lessee. For the Board of Land Appeals to exercise its discretion under 43 CFR 4.415 and order a hearing, the appellant must allege facts which, if proved, would entitle him to the relief sought.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976)
83 I.D. 269

Under 43 CFR 2802.1-7(e), which provides that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Following a hearing under 43 CFR 2802.1-7, a decision increasing the charges for use and occupancy of a communication site is in error to the extent that the decision is based upon unspecified evidence not in the record and not made known to the user, and the decision must be set aside.

In a case where a substantial increase is proposed in charges for a communication site under 43 CFR 2802.1-7(e), the required hearing should be conducted in accordance with the accepted concepts of due process.

American Telephone and Telegraph Co. et al., 25 IBLA 341 (June 30, 1976)

A second hearing will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, and where he actually was represented at the hearing and where nothing has been submitted which suggests that another hearing would produce a different result.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

Under 43 CFR 2802.1-7(e), which provides that charges for a right-of-way on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Paradise Oil, Water and Land Development, Inc., 26 IBLA 374 (Sept. 8, 1976)

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Co., Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the administrative law judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

It is within the discretion of the Board of Land Appeals to grant a request for a hearing on a question of fact. In order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976)
83 I.D. 518

In a proceeding before the Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

W. A. Todd, A. D. Johnson, 28 IBLA 180 (Dec. 1, 1976)

David Rudinski et al., 31 IBLA 139 (June 30, 1977)

Where the record does not disclose sufficient facts upon which to make determinations whether a Bureau of Land Management officer who signed an oil and gas lease possessed the authority to do so, when the date of ascertainment of a known geologic structure actually occurred, and whether the United States Geological Survey had sufficient information to make a known geologic structure determination, a hearing may be ordered so that a complete record may be developed.

William T. Alexander (On Remand), 28 IBLA 277 (Dec. 22, 1976)

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. A mining claim may be declared null and void where there was a charge in the complaint of insufficient minerals to constitute a valid discovery.

United States v. William C. Smith, a/k/a Bill Smith, 29 IBLA 7 (Feb. 8, 1977)

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. However, under the rules an answer may be accepted if it is received within 10 days after the due date and it is determined that the answer was probably transmitted before the end of the period in which it was required to be filed.

United States v. Jesse Smith, 29 IBLA 10 (Feb. 8, 1977)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

United States v. Richard E. Wells, 30 IBLA 333 (June 7, 1977)

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

Andrew J. Van Derpoel et al., 33 IBLA 248 (Jan. 5, 1978)

United States v. Clark J. Guild et al., 34 IBLA 387 (May 3, 1978)

United States v. Don Lee Seto and Pauline Seto, 35 IBLA 4 (May 3, 1978)

United States v. John A. Cooley, 43 IBLA 276 (Oct. 15, 1979)

United States v. Jon Zimmers and Claire Kelly, 44 IBLA 142 (Nov. 30, 1979)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

Charles B. Nielsen, Pauline Nielsen, 30 IBLA 235 (May 26, 1977)

James Messano, 35 IBLA 383 (June 23, 1978)

Evidence offered on appeal from an initial decision by an administrative law judge after a hearing in a contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

David A. Burns, 30 IBLA 359 (June 10, 1977)

Joe I. Sanchez and Celina V. Sanchez, et al., 42 IBLA 176 (Aug. 22, 1979)

Government witnesses in a contest proceeding who are qualified by education and experience are competent to testify as experts with reference to the prudent man rule.

United States v. A. C. Bartell, 31 IBLA 47 (June 23, 1977)

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without notice and an opportunity for hearing.

Cajon Minerals, Inc., 31 IBLA 188 (July 5, 1977)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

Where an administrative law judge's decision contains a ruling, in a single sentence, on all of the proposed findings and conclusions submitted by a party to a hearing and the ruling on each finding and conclusion is clear, there is no requirement that the judge rule separately as to each of the proposed findings and conclusions.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Bukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an administrative law judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

When a mining claim located in the Papago Indian Reservation is declared invalid for failure to pay annual rental timely, and that fact is not disputed, a hearing is not required as there are no issues of fact involved but only of law.

Louis B. Illsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

A request for a hearing will be denied in the absence of an assertion of fact which, if proved true, would entitle appellant to the relief sought.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

When the United States contests a mining claim for lack of discovery of a valuable mineral deposit, a crucial date for the existence or nonexistence of the discovery is the date of the hearing. Where a mining claimant has shown no justification for her failure to offer evidence of a discovery at the hearing nor shown any likelihood that further evidence could be presented to change the result, a request on appeal for additional time to explore the claim for additional evidence of minerals will be denied, and an administrative law judge's decision declaring the claim null and void will be affirmed.

United States v. Thelma C. Crismon, 34 IBLA 381 (May 2, 1978)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970) and 43 U.S.C. § 898 (1970), in which case a hearing need not be ordered to determine whether a railroad's purchaser was an innocent purchaser for value.

Southern Pacific Transportation Co., Donald E. Lee, Charles Siller v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

It requires a substantial showing of bias to disqualify a hearing officer in administrative proceedings or to justify a charge that the hearing was unfair.

United States v. Richard H. Kingdon and Edith F. Kingdon, 36 IBLA 11 (June 27, 1978)

The Government has established a prima facie case of nondiscovery when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Catherine B. Gay, 36 IBLA 146 (July 31, 1978)

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decisionmaker, that the decisionmaker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

Donald R. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

In an administrative hearing to determine the validity of a mining claim, the requirements of due process are satisfied when notice and opportunity for an impartial hearing are provided in accordance with the Administrative Procedure Act. 5 U.S.C. § 551 *et seq.* (1976).

The mere fact that the witnesses, the administrative law judge, and members of the Board of Land Appeals are employees of the Department of the Interior does not establish unfairness in the contest proceeding.

A Forest Service mineral examiner who is a witness in a Government contest of a mining claim is not disqualified nor is his testimony discredited merely because he is an employee of that agency.

In order to sustain a charge that an administrative law judge should be disqualified or his decision set aside for bias, a substantial showing of personal bias must be made.

The Secretary of the Interior has plenary authority over the public lands, including mineral lands, and has been entrusted with the function of making the initial determination of the validity of claims against such lands.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

Where there exist factual questions about the location of section and subdivisional corners in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

A delay in taking action on an application for extension of a coal prospecting permit while the Secretary formulates a new leasing policy does not violate the Administrative Procedure Act, 5 U.S.C. § 555(b) (1976), nor does it constitute an abuse of discretion which would create any rights not authorized by law. No hearing is required when the facts of a case are not in dispute and the only issues are questions of law.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of proving a discovery onto the mining claimant, when an expert witness testifies that he has examined the claim and has found the mineral values insufficient to support a finding of discovery.

United States v. John S. Porter, 37 IBLA 313 (Oct. 25, 1978)

A request for a hearing will be denied when the facts are not in dispute and the determination rests on questions of law.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants.

United States v. Loren E. Burns et al., 38 IBLA 97 (Nov. 20, 1978)

Where the alleged trespasser makes no allegations of a specific and substantial nature regarding whether or not a trespass has in fact occurred, the procedure authorized by 43 CFR 9239.3-2(c)(4) limiting a hearing "to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass" does not result in a denial of due process.

A hearing on the issue of whether or not a trespass was willful or not clearly willful is authorized by 43 CFR 9239.3-2(c)(4) because a finding on this issue affects the rate at which the value of the forage consumed shall be computed pursuant to 43 CFR 9239.3-2(c)(2).

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(3) do not violate due process.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of going forward, when an expert witness testified that he has examined the claim and has found the mineral value insufficient to support a finding of discovery.

United States v. Tempest Mining Co., 40 IBLA 297 (Apr. 27, 1979)

Alaska Natives who allege substantial use and occupancy of vacant, unappropriated, and unreserved public land in Alaska for a period of at least 5 years pursuant to the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 to 270-3 (1970), and the regulations at 43 CFR Subpart 2561 are entitled to notice and an opportunity for a hearing prior to rejection of their application. Such notice shall specify the reasons for the proposed rejection. Claimant shall have an opportunity to present evidence and testimony of favorable witnesses at a hearing before the trier of fact prior to a decision.

John Moore et al., 40 IBLA 321 (Apr. 30, 1979)
86 I.D. 279

When an Alaska Native allotment applicant alleges that there has been substantial use and occupancy of vacant, unappropriated, and unreserved public land in Alaska for a period of at least 5 years pursuant to 43 U.S.C. §§ 270-1 to 270-3 (1970) and 43 CFR Subpart 2561, and the Bureau of Land Management determines the application should be rejected because the land was not so used and occupied, the Native is entitled under contest procedures, 43 CFR 4.451, to notice and an opportunity for a hearing prior to rejection of his application.

Mary Bobby, 41 IBLA 44 (May 29, 1979)

Rika Murphy, Gene H. Seagge, 42 IBLA 51 (July 31, 1979)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before the trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 *et seq*.

Fredrick Phillips et al., 41 IBLA 169 (June 22, 1979)

Ella S. Sheldon et al., 42 IBLA 276 (Aug. 27, 1979)

Continued--

Elena Bartman, 43 IBLA 284 (Oct. 17, 1979)

Where legal conclusions are reached in an appellate decision upon undisputed facts, and there has been no proffer of further facts which could compel different legal conclusions, no useful purpose would be served for a hearing, and a request therefor is properly denied.

Floyd L. Anderson, Sr., 41 IBLA 280 (June 28, 1979)
86 I.D. 345

Peter Paspuk, 43 IBLA 69 (Sept. 19, 1979)

Ricky Nickoli, 43 IBLA 296 (Oct. 17, 1979)

A request for a hearing on a Native allotment application will be denied where there are no facts in dispute and the sole question is a legal issue.

Lindberg Alexander, 41 IBLA 382 (July 23, 1979)

Two mining claims, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void at initio without a hearing. Such a result obtains despite reference to a location notice prior to the withdrawal where appellants do not make a showing of sufficient specific facts upon which to predicate a hearing, including which of the claims the previous location relates to, the boundaries thereof, whether the previous location was for a locatable mineral under a withdrawal order then in force, and the name of the previous locator.

The Heirs of H. K. Harris, 42 IBLA 44 (July 31, 1979)

The substantial use and occupancy required under the Native Allotment Act must be achieved by the Native himself as an independent citizen (or family head) and such use must be at least potentially exclusive of others. Although a minor may initiate such use and occupancy, use and occupancy by a dependent accompanied by his parents does not qualify.

Where a Native allotment application has been rejected, based on the guidelines of Oct. 18, 1973, on the basis that the applicant had not demonstrated 5 years use and occupancy of the land prior to the withdrawal affecting the land, and that requirement is abolished by Secretarial Order No. 3040, of May 25, 1979, the decision will be set aside and the case remanded for action.

Bella Nora, 42 IBLA 59 (Aug. 2, 1979)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

The entire evidentiary record in a mining contest is considered and if evidence presented by a contestee is damaging to the contestee's case it may be used against the contestee regardless of any deficiencies in the Government's presentation. Therefore, regardless of whether the Government established a prima facie case of lack of discovery, if the entire record establishes that a discovery was not made on a claim it is properly declared null and void.

It was proper to deny mining claimants' request to redrill on mining claims after the land was withdrawn from mining where the work would be an effort to make a discovery of a valuable mineral deposit within the claim rather than simply a confirmation or corroboration of a discovery prior to the withdrawal.

United States v. William Lavon Chappell et al.,
42 IBLA 74 (Aug. 13, 1979)

The Board of Land Appeals has the discretion to grant a request for a hearing on issues of fact but, in order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Dardelle M. Smith, Sherman C. Smith, 42 IBLA 136
(Aug. 16, 1979)

Where legal conclusions may be reached upon undisputed facts and there has been no proffer of further facts which could compel different legal conclusions, a request for a hearing is properly denied.

Sam Hanlon, Sr., 42 IBLA 161 (Aug. 17, 1979)

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted.

A hearing will be afforded to a Native allotment applicant to show his/her entitlement to a Native allotment in view of court decisions requiring hearings on Native allotment applications. Where the applicant requests a hearing and alleges there are factual disputes concerning abandonment and nonuse of the claim, although the showings on the application show nonuse of the land for a lengthy period of time sufficient ordinarily to constitute a prima facie case for rejection of the application, a hearing is nevertheless mandated.

Mildred Sparks, 42 IBLA 155 (Aug. 19, 1979)

A hearing is properly ordered where there exist issues of fact the resolution of which will determine whether an oil and gas lease concluding its primary term was converted from rental status to royalty status. Appellant shall have the burden of proof to establish by a preponderance of the evidence (a) that the Dolezal-Government #1 well was capable of producing oil and gas in paying quantities on Oct. 31, 1978, or (b) that there was a discovery of oil or gas in paying quantities on lease W 15891 on Oct. 31, 1978. If either (or both) of these propositions is established, the subject lease was not subject to automatic termination by law for failure to make timely rental payment.

Coronado Oil Co., 42 IBLA 235 (Aug. 22, 1979)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Where an applicant for a Native allotment alleges for the first time on appeal his use and occupancy of lands prior to their withdrawal, a decision rejecting the Native's application shall be vacated and the case remanded to BLM for its consideration of appellant's new evidence.

Charles L. John, 42 IBLA 260 (Aug. 27, 1979)

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Andy Syndbad, 42 IBLA 313 (Aug. 29, 1979)

A request for a hearing on a Native allotment application will be denied where no factual dispute exists and all issues are legal ones.

Betty J. Thompson, 43 IBLA 174 (Sept. 28, 1979)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give the appropriate weight according to the circumstances surrounding the specific report. However, it is not improper to exclude an assay report where neither the assayer nor the sample-taker testifies concerning its origins, and no other foundation is laid for its introduction.

United States v. John B. Burt et al., 43 IBLA 363 (Oct. 29, 1979)

It is the responsibility of a mining claimant to present evidence supporting his allegation of bias on the part of Government mineral examiners testifying as to the validity of his claim in a contest proceeding, and a showing of Department affiliation does not discredit a witness.

United States v. J. D. Wilson, 44 IBLA 1 (Nov. 6, 1979)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Dorothy Smith, Keith C. Hayes, 44 IBLA 25 (Nov. 6, 1979)

The administrative law judge properly exercised his authority to control the hearings where he controlled the manner of examination but did not limit the scope of testimony of witness, and where he permitted adequate time for submission of proposed findings by the parties prior to issuance of the final order.

Estate of Edward Lockwood, Jr., 7 IBIA 271 (Nov. 20, 1979)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject the application for allotment.

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.450 - 4.452-9.

Amy Tukrook Nukapigak, 44 IBLA 313 (Dec. 31, 1979)

INITIAL DECISION

The ultimate findings and decision of the administrative law judge adopted by the Commissioner of Indian Affairs will not be set aside upon administrative review where they are supported by substantial evidence.

Administrative Appeal of Mary Ann Tecumseh Combs (Flathead Allottee No. 1648) v. Commissioner of Indian Affairs, 4 IBIA 27 (Apr. 28, 1975) 82 I.D. 184

The ultimate findings, conclusions and order of the administrative law judge will not be set aside upon administrative review where they are supported by substantial evidence.

Estate of Evans Ingatuah, 4 IBIA 103 (July 29, 1975) 82 I.D. 352

Where the Bureau of Land Management erroneously described a portion of the land listed in a notice to show cause why a grazing lease should not be canceled in part, the lessee is not denied due process where the land could not be confused with other lands in the grazing lease, where BLM corrected and explained its mistake in the subsequent decision, where no prejudice from the mistake is alleged or evident, and where the

ADMINISTRATIVE PROCEDURE--Continued

INITIAL DECISION--Continued

lessee has had every opportunity to present her arguments on the issues involved in the BLM actions.

Evelyn Elsman, 35 IBLA 23 (May 5, 1978)

The Secretary of the Interior has plenary authority over the public lands, including mineral lands, and has been entrusted with the function of making the initial determination of the validity of claims against such lands.

United States v. Paul P. Fisher and Buel P. Fisher, 37 IBLA 60 (Sept. 22, 1978)

Where determination of issues of fact turn upon weight to be given to conflicting testimony, findings of fact concerning testimony are required to be made by the initial trier of fact.

Estate of Joseph Caddo a.k.a. James Joseph Caddo and Jim Butler, 7 IBIA 286 (Nov. 28, 1979)

JUDICIAL REVIEW

Where the Board of Land Appeals, by a previous decision, has held that a particular oil and gas lease offer must be rejected, and the rejected applicant files suit for judicial review of that decision in the United States District Court, and also files a contemporaneous appeal to the Board from a BLM decision implementing the Board's decision, the Board will defer to the Court's jurisdiction and make no decision on the merits of the appeal, which is subject to summary dismissal by the Board.

Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

A party adversely affected by a final order or decision of an officer of the Conservation Division of the Geological Survey has a right to appeal to the Director, Geological Survey, unless the decision was approved by the Secretary or Director prior to promulgation.

A party adversely affected by a final decision of the Director, Geological Survey, had a right of appeal to the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary.

Phoenix Resources Co., 39 IBLA 153 (Jan. 29, 1979)

Where the holder of an oil and gas lease on the Outer Continental Shelf has filed a suit in a Federal district court to recover certain royalties paid under his lease, the Board of Land Appeals will affirm a decision of the Director, Geological Survey, holding in abeyance the lessee's request for a refund while the suit is pending.

Tenneco Oil Co., 41 IBLA 195 (June 22, 1979)

LICENSING

Where a qualifying discovery of mineral has been made by a permittee during the term of a permit, a coal preference right lease application need not be rejected because it was filed after the permit expired.

Thermal Energy Co. et al., 36 IBLA 334 (Aug. 28, 1978)

ADMINISTRATIVE PROCEDURE--Continued

LICENSING--Continued

Sec. 9(b) of the Administrative Procedure Act, *as amended*, 5 U.S.C. § 558(c) (1976), does not apply to coal prospecting permit extension applications because the prospecting is not an "activity of a continuing nature" within the meaning of the statute. As the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 30 U.S.C. § 201 (1976), removed the Secretary of the Interior's discretion to grant extensions, applications for preference right leases filed after expiration of the initial 2-year permit term, and during pendency of extension applications, cannot be issued.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

RULE MAKING

Where notice of proposed rulemaking to change certain filing fees and to impose other charges has been published in the *Federal Register*, but no final rules have been published, the old schedule of fees will remain in effect until such time as the new rules are finally adopted, published, and made effective.

Arizona Public Service Co., 20 IBLA 120 (Apr. 25, 1975)

The promulgation or revocation of a regulation is within the special authority of the Secretary of the Interior and a limited number of delegates. A regulation when promulgated is binding upon departmental officials.

The requirement in the Administrative Procedure Act, 5 U.S.C. § 553(d) (1970), that the required publication of a substantive rule be made not less than 30 days before its effective date is satisfied by publication of proposed rulemaking with a 30-day comment period, followed thereafter by final rulemaking. Minor changes in a final rule from the proposed rule do not require new proposed rulemaking.

Assuming, *arguendo*, the applicability of the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970), to an amendment of 43 CFR 3102.3-2 increasing the rental rate of noncompetitive oil and gas leases, the provisions of the Act were satisfied where the proposed increase was published as proposed rulemaking on Mar. 18, 1976, to be effective July 1, 1976, and final rulemaking was published Jan. 5, 1977, changing the effective date of the rental increase to Feb. 1, 1977.

E. B. Gaither et al., 32 IBLA 106 (Sept. 12, 1977)

The promulgation or revocation of a regulation is within the special authority of the Secretary of the Interior and a limited number of delegates. A regulation, when promulgated, is binding upon all Departmental officials.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

Where a mining claim is located after the enactment of the Federal Land Policy and Management Act of 1976 (Oct. 21, 1976), but before the date of promulgation of regulations implementing the statutory requirements of the Act relative to the recordation of mining claims, a regulation having retroactive effects may nonetheless be sustained in spite of such retroactivity if it is reasonable.

Elbert O. Jepsen, 39 IBLA 62 (Jan. 17, 1979)

ADMINISTRATIVE PROCEDURE--Continued

RULE MAKING--Continued

The interpretation of an existing regulation by this Board to determine its applicability to the facts at hand does not constitute rulemaking by the Board.

H. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

Neither a Recreation and Public Purposes Act classification nor a withdrawal is a rule or regulation within the ambit of the Secretarial policy of Apr. 27, 1971, which provides for utilization of the public participation procedures of 5 U.S.C. § 553 (1976).

Delmer McLean et al., 40 IBLA 34 (Mar. 15, 1979)

An interpretative rule is a clarification or explanation of an *existing* regulation, rather than a substantive modification thereof or the adoption of a new regulation.

Harry A. Zuckerman et al., 41 IBLA 372 (July 23, 1979)

STANDING

Holders of grazing permits under sec. 3 of the Taylor Grazing Act whose permits give them grazing rights for public lands which are subsequently traversed by a power line right-of-way grant have standing to appeal the decision granting the right-of-way.

David Smith Ranches et al. (Appellants), Colorado Ute Electric Ass'n, Inc. (Intervenor), 33 IBLA 7 (Nov. 15, 1977)

Intervention, by right, as a full party in a contest proceeding is only recognized where the individual seeking intervention has the necessary interest to maintain a private contest independently under 43 CFR 4.450-1.

The extent of the participation in a contest hearing to be afforded "interested individuals" who do not have a sufficient interest to maintain a private contest is committed to the sound discretion of the administrative law judge. Among the factors which are properly considered are: the desires of the original parties; the likelihood that the party seeking intervention will provide information which would not be forthcoming without its participation; and the cost which must be borne by both the contestant and the contestee by the nature and scope of the intervention granted.

United States v. United States Pumice Co., 37 IBLA 153 (Oct. 5, 1978)

Where the State is a party to decisions by the Bureau of Land Management and the State's selection applications were rejected by those decisions, under 43 CFR 4.410, the State has standing to appeal those decisions to the Board of Land Appeals.

Under the "functional" standard to determine administrative standing set forth in *Koniag, Inc.* v. *Andrus*, 580 F.2d 601 (D.C. Cir. 1978), *cert*. *denied*, 99 S. Ct. 733 (1979), the State of Alaska has standing to challenge Native allotment applications conflicting with its selection applications even if the land is within a Native village selection area under the Alaska Native Claims Settlement Act. The State has standing under Departmental regulations to initiate private contests against such conflicting Native allotment applications.

State of Alaska et al., 41 IBLA 315 (July 11, 1979)
86 I.D. 361

The State of Alaska has a sufficient interest in land by virtue of its applications for an airport conveyance or by its selection application to have standing to initiate private contests against conflicting Native allotment applications.

State of Alaska, 42 IBLA 1 (July 25, 1979)

SUBSTANTIAL EVIDENCE

The ultimate findings and decision of the administrative law judge adopted by the Commissioner of Indian Affairs will not be set aside upon administrative review where they are supported by substantial evidence.

Administrative Appeal of Mary Ann Topsseh Combs (Flathead Allottee No. 1648) v. Commissioner of Indian Affairs, 4 IBIA 27 (Apr. 28, 1975) 82 I.D. 184

The ultimate findings, conclusions and order of the administrative law judge will not be set aside upon administrative review where they are supported by substantial evidence.

Estate of Evans Ingaruah, 4 IBIA 103 (July 29, 1975)
82 I.D. 352

Where, in an effort to negotiate a compromise settlement of an alleged grazing trespass, a rancher concedes that the trespass occurred to the extent of a specific number of animal unit months of forage, but the proposed settlement is not consummated and the case goes to a hearing on its merits, evidence of the purported admissions made by the party during such negotiations must be excluded as not competent to show either the fact or the extent of the trespass alleged.

Cesar and Robert Siard, 26 IBLA 29 (July 6, 1976)

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

ADMINISTRATIVE PROCEDURE--Continued

SUBSTANTIAL EVIDENCE--Continued

A party seeking a partial refund of the purchase price under the risk of loss provision of a contract for the cash sale of vegetative resources pursuant to the Materials Act of July 31, 1947, must present substantial evidence of the quantity of resources lost which otherwise would have been harvested.

Alma D. LeBaron, Jr., 32 IBLA 299 (Sept. 29, 1977)

In a hearing held pursuant to the Administrative Procedure Act, evidence sufficient to support a decision must be reliable, probative, and substantial. 5 U.S.C. § 556(d) (1976).

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

AGENCY

In the absence of joint lessees establishing the existence of a prior agreement that a particular lessee was responsible for payment of the oil and gas lease rental, the failure of the joint lessees to pay the rental timely is a joint failure and the joint lessees must each satisfy the reinstatement requirements of 30 U.S.C. § 188(c) (1970). In the absence of reasonable diligence, the lease cannot be reinstated unless each joint lessee can show that he has a justifiable excuse for failing to pay the rental timely.

Frederick C. Farrington, George H. Hoffman, 36 IBLA 70 (June 30, 1978)

Where a contract between an oil and gas lease offeror and a leasing service created an agency relationship, in the absence of circumstances giving the agent an authority coupled with an interest, the agent's authority ordinarily terminated upon the death of the principal. If the leasing service had an interest, a lease could not issue to the estate of the deceased if no statement was filed delineating the nature and extent of that interest as required by 43 CFR 3102.7.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978) 85 I.D. 403

AIRPORTS

The issuance of a public airport lease on national resource lands lies within the discretion of the Secretary of the Interior. The Department may require an applicant for a public airport lease to accept special stipulations in order to protect the environmental quality of the land, so long as the stipulations are not inconsistent with other reasonable requirements of the Bureau of Land Management or Federal Aviation Administration.

A. W. Brothers, 19 IBLA 144 (Mar. 7, 1975)

AIRPORTS--Continued

The issuance of a public airport lease on the public domain lies within the discretion of the Secretary of the Interior. A decision rejecting an airport lease application in the exercise of that discretion will be affirmed when, even though the Board differs in its opinion of the importance of some of the factors recited as grounds for the rejection, the record shows the decision to be a reasoned analysis of the factors involved, and no sufficient basis to disturb the decision is shown.

Boulder City Aero Club, Inc., 21 IBLA 343 (Aug. 18, 1975)

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

Good Roads District No. 1, 25 IBLA 123 (June 7, 1976)

ALASKA

GENERALLY

Settlement on a homestead claim in Alaska 2 days prior to a withdrawal of the land does not except the land from the withdrawal where the claimant failed to file his notice of location within 90 days after settlement as required by the Act of Apr. 29, 1950, 64 Stat. 94, 43 U.S.C. §§ 270, 270-5, 270-6 (1970), and his notice is properly held to be unacceptable for recordation.

Gary Lee Slay, 18 IBLA 345 (Jan. 14, 1975)

A decision of the Bureau of Land Management rejecting a Native Allotment application because the land is within an oil shale withdrawal will be set aside and remanded for further consideration where the Secretary of the Interior has directed the Geological Survey to review its mineral classifications in Alaska and the applicant requests an opportunity to present evidence to dispute the classification.

Raymond Paneak, 19 IBLA 68 (Feb. 25, 1975)

Lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (Supp. III 1973), are withdrawn from all forms of appropriation under the public land laws, including, without limitation, the Recreation and Public Purposes Act, *as amended*, 43 U.S.C. §§ 869 to 869-3 (1970), and an application under the latter Act for such withdrawn lands is properly rejected.

Alaska Department of Fish and Game, 20 IBLA 50 (Apr. 23, 1975)

A claimant's occupancy of a headquarters site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

ALASKA--Continued

GENERALLY--Continued

A request for equitable adjudication relief to permit purchase of a headquarters site claim is premature in the absence of an application to purchase the claim.

The equitable adjudication authority is not appropriate and may not be applied to permit the filing of a headquarters site notice of location after the land has been withdrawn.

Rene P. Lamoureux, 20 IBLA 243 (May 16, 1975)

A claimant's occupancy of a homesite prior to a withdrawal does not establish a "valid existing right," excepted by the withdrawal, under the Act of Apr. 29, 1950, where claimant did not file his notice of location within 90 days after occupancy, nor did he file a notice of location or purchase application prior to the withdrawal.

Equitable adjudication authority is not appropriate and may not be applied to permit filing of a homesite notice of location after the land has been withdrawn.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

Where the claimant of a headquarters site filed his notice of location, occupied the land, and began making improvements thereon prior to the segregation of the land by a withdrawal made subject to valid existing rights, it is error for the Bureau of Land Management to refuse to record the claimant's notice of location, or to cancel the claim without notice and an opportunity for hearing.

Donald J. Thomas, 22 IBLA 210 (Oct. 15, 1975)

Location of a homesite claim without substantial use or occupancy of the land in compliance with the law creates no property interest in the land. Where the claimant under sec. 10 of the Act of May 14, 1898, *as amended*, 43 U.S.C. § 687(a) (1970), has merely marked the boundaries of the claim prior to a withdrawal of the land, such activity does not constitute occupation or possession of the land and the claim will be defeated by that withdrawal.

A notice of location for a homesite which alleges only acts of occupancy and improvement insufficient to create any interest in the land is properly denied recordation.

Edward P. Dooley, 22 IBLA 330 (Nov. 14, 1975)

The filing of an amended Alaska State Selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Flatt, Allen C. Flatt, 23 IBLA 59 (Dec. 11, 1975)

Any right which may be gained under a notice of location for a trade and manufacturing site or a homesite, as required by the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1976), is personal to the party filing the notice.

A trade and manufacturing site notice of location not supported by actual settlement and occupancy authorized by 43 U.S.C. § 687a (1976) does not change the status of the public lands.

John H. Seatland et al., 24 IBLA 240 (Mar. 25, 1976)

James Sims, 42 IBLA 231 (Aug. 22, 1979)

Without adequate proof of a tender of a notice of location or application to purchase a headquarters site which was wrongfully denied by Bureau of Land Management personnel prior to a withdrawal of the land, the mere occupancy of land prior to the withdrawal did not create a "valid existing right" excepted from the effect of the withdrawal, and an application to purchase a headquarters site filed after the withdrawal is properly rejected.

Equitable adjudication of an application to purchase a headquarters site claim filed at least 8 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

Rene P. Lamoureux d/b/a Frenchy Lamoureux, 39 IBLA 36 (Jan. 15, 1979)

Where the State of Alaska has shown an interest in land in its existing airport, it may bring a private contest to challenge Native allotment applications for land in conflict with the airport.

State of Alaska, 40 IBLA 79 (Mar. 22, 1979)

The State of Alaska will be afforded time within which to bring private contests against Native allotment applications conflicting with an existing airport runway built by the State and to show it has standing to contest. If it does so timely, the Bureau of Land Management will adjudicate its standing as a contestant and the contests will proceed if it finds affirmatively. If not, the State's timely objections will be taken as a protest and a factfinding hearing will be held. If the State fails to take timely action, a decision rejecting its application to reinstate a conflicting airport lease application will stand.

State of Alaska, 40 IBLA 118 (Mar. 27, 1979)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

Procedures adopted to implement the Public Land Survey System as provided in Title 43, Chapters 1 and 1E, and regulations promulgated thereunder are made applicable to land withdrawals by sec. 13 of ANCSA.

Establishing of "standard parallel" or "correction" lines in compliance with authorized procedure to implement Public Land Survey System is not inconsistent with provisions of sec. 11(a)(1) withdrawal.

Appeal of Eklutna, Inc., 1 ANCAB 165 (Sept. 28, 1976)
83 I.D. 500

Where a decision rejects an application for an Alaska grazing lease because of an asserted Secretarial policy against granting such applications for land withdrawn pursuant to sec. 17(d)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(d)(2) (Supp. V 1975), but the record on appeal is incomplete with respect to

ALASKA--Continued

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

the existence of such policy, the record should be remanded for further documentation.

Kenneth E. Bunch, 37 IBLA 346 (Oct. 27, 1978)

Whether the issuance of PLO No. 5448, prohibiting oil and gas leasing in Alaska, without prior proposed rulemaking is violative of the Administrative Procedure Act or of the Alaska Native Claims Settlement Act need not be decided; by such issuance the Secretary has enunciated a policy of rejecting mineral lease applications well within his discretionary authority.

Bristol Bay Native Corp., 41 IBLA 85 (June 4, 1979)

The Alaska Native Claims Settlement Act extinguished aboriginal occupancy claims of Alaska Natives; such claims cannot serve as a bar to a State selection, nor preclude the State from challenging Native allotment applications conflicting with its selection.

Under the "functional" standard to determine administrative standing set forth in *Koniag, Inc.* v. *Andrus*, 580 F.2d 601 (D.C. Cir. 1978), *cert. denied*, 99 S. Ct. 733 (1979), the State of Alaska has standing to challenge Native allotment applications conflicting with its selection applications even if the land is within a Native village selection area under the Alaska Native Claims Settlement Act. The State has standing under Departmental regulations to initiate private contests against such conflicting Native allotment applications.

State of Alaska et al., 41 IBLA 315 (July 11, 1979)
86 I.D. 361

The granting of a right-of-way under FLPMA and the superseded Acts of Feb. 15, 1901, and Mar. 4, 1911, is within the Secretary's discretion and neither the filing of the application nor the existence of improvements earns appellant a right to the right-of-way. No rights vest in the applicant until the grant is approved by the Secretary. An application for a right-of-way is properly rejected where the land is in an interim conveyance to a Native Corporation.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

GRAZING

A grazing lease issued in 1933 for reindeer under the Act of Mar. 4, 1927, became subject to the Reindeer Act of Sept. 1, 1937 [illegible] rules and regulations thereunder. Interpretations of the effect of grazing rights granted under the 1937 Act upon a Native allotment applicant's claim of occupancy may be applied to such a lease, if they are not to the detriment of the lessee.

A regulation pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows settlement rights to be initiated while a permit issued under that Act is in existence. The policy manifest in that regulation may be followed, in the exercise of the Secretary's discretion, to permit consideration of a Native allotment applicant's occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of Mar. 4, 1927, and the regulation was promulgated after initiation of the occupancy.

Kristeen J. Burke, Joe N. Melovedoff, Victor Melovedoff, 20 IBLA 162 (May 5, 1975)

ALASKA--Continued

GRAZING--Continued

The policy manifest in regulations pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows, in the exercise of the Secretary's discretion, consideration of a Native allotment applicant's use and occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of Mar. 4, 1927.

Carl E. Balstin et al., 21 IBLA 152 (July 16, 1975)

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 while the grazing lease was still extant, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Herman Haakanson, 23 IBLA 54 (Dec. 4, 1975)

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq.* (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 *et seq.* (1970), until the lease is canceled of record.

The filing of an Alaska State selection for land in an Alaska grazing lease constitutes a petition for determination under 43 CFR 4131.3-1, and upon favorable determination and cancellation of the lease, the State's rights, including segregation of the land in its favor, relate back to the filing of the selection.

Native use and occupancy of land within an Alaska grazing lease does not preclude the State from selecting the land as "vacant and unappropriated" land within the meaning of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes prec. § 21 (1970). The initiation of use and occupancy subsequent to the segregation of the land in favor of the State gives an applicant no rights to an allotment.

Sandra H. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

Under the Alaska Native Allotment Act, no rights are acquired by an applicant who asserted commencement of settlement on land when it was included in a grazing lease issued under the Alaska Grazing Act of 1927, because the land was segregated from adverse appropriation.

Christine Von Scheele, 23 IBLA 346 (Jan. 21, 1976)

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq.* (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 *et seq.* (1970), until the lease is canceled of record *pro tanto*.

Myrtle H. Jensen Shanigan, 29 IBLA 255 (Mar. 25, 1977)

ALASKA--Continued

GRAZING--Continued

Where a decision rejects an application for an Alaska grazing lease because of an asserted Secretarial policy against granting such applications for land withdrawn pursuant to sec. 17(d)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(d)(2) (Supp. V 1975), but the record on appeal is incomplete with respect to the existence of such policy, the record should be remanded for further documentation.

Neither an application for an Alaska grazing lease nor an application for assignment of a grazing lease confer upon the applicant a right to a lease, the granting thereof being discretionary and subject to any changes in Secretarial policy.

The Board of Land Appeals will not exercise its de novo review authority to deny applications for Alaska grazing leases on the basis of trespass where (1) trespass was not cited as a reason for denial of the applications in the decision under appeal, (2) the record does not provide a clear basis for determining the applicant's responsibility for the trespass, and (3) there is no record of compliance with the procedures specified in 43 CFR 9239.0-9(b).

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

Native occupancy and use commenced at a time when land is withdrawn from settlement, location, sale, or entry provides no basis for a Native allotment. Withdrawal of the land in 1940 by Exec. Order No. 8344, inclusion of the land in a grazing lease and homesite, and the subsequent selection of the land by the State of Alaska in 1966 have effectively kept the land closed to the initiation of rights under the Act of May 17, 1906, at all times during the period from 1940 to Dec. 18, 1971, when the Act was repealed by the Alaska Native Claims Settlement Act.

Although the Department has adhered to the principle of protecting Indian occupancy on public lands, it also has the responsibility of protecting rights of others to public land tenure, including persons who have been granted grazing leases under the Alaska Grazing Act of Mar. 4, 1927, *as amended*, 43 U.S.C. §§ 316, 316a-316o (1976).

Milton R. Pagano, 41 IBLA 214 (June 27, 1979)

Native use and occupancy commenced at a time when land is otherwise appropriated and segregated from such use and occupancy provides no basis for a claim under the Act of May 17, 1906. Inclusion of the subject lands in 1932 in a grazing lease, withdrawal of the lands in 1940, selection of the lands in 1967 by the State of Alaska, and subsequent withdrawals in 1973 pursuant to the Alaska Native Claims Settlement Act have effectively kept the lands closed to the initiation of rights under the Act of May 17, 1906, at all times during the period from 1932 to Dec. 18, 1971, when the Act was repealed by sec. 18 of the Alaska Native Claims Settlement Act.

Although the Department has adhered to the principle of protecting Indian occupancy on public lands, it also has the responsibility of protecting rights of others to public land tenure, including persons who have been granted grazing leases under the Alaska Grazing Act of Mar. 4, 1927, *as amended*, 43 U.S.C. §§ 316, 316a-316o (1976).

Manuel E. Drabek, 41 IBLA 219 (June 27, 1979)

ALASKA--Continued

GRAZING--Continued

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Norman Orbeck, Billy Boskofsky, Jr. (As Heir of Nicholas Boskofsky), 41 IBLA 338 (July 11, 1979)

HEADQUARTERS SITES

If an applicant for a headquarters site does not allege facts that, if taken as true, show that she uses the site in connection with a trade, manufacture, or other productive industry, the Bureau of Land Management may cancel her claim without a hearing.

An applicant for a headquarters site does not establish that she is engaged in a trade, manufacture, or other productive industry by showing an abandoned business which had only meager gross receipts.

In order to meet the headquarters site law requirements, all the requirements of use, being in a business venture, etc., must be accomplished by the time the statutory life of the claim expires.

LaVeta C. Schoenhorster, 19 IBLA 90 (Mar. 3, 1975)

If an applicant for a headquarters site does not make the showings required by the regulations and establish his entitlement to purchase under the Act of Mar. 3, 1927, 44 Stat. 1364, 43 U.S.C. § 687a (1970), his application may be rejected and his claim canceled without a hearing.

William T. Criner, 19 IBLA 149 (Mar. 13, 1975)

A claimant's occupancy of a headquarters site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

A request for equitable adjudication relief to permit purchase of a headquarters site claim is premature in the absence of an application to purchase the claim.

The equitable adjudication authority is not appropriate and may not be applied to permit the filing of a headquarters site notice of location after the land has been withdrawn.

Rene F. Lamoureux, 20 IBLA 243 (May 16, 1975)

As only nonmineral lands may be appropriate under the law pertaining to headquarters sites, where the Geological Survey reports that a tract of entered land is nonmineral in character and the Bureau of Land Management therefore formally advises the claimant that the tract is subject to settlement or occupancy and officially acknowledges his claim, and the claimant thereafter complies fully with the law and applies for patent, a subsequent determination that the land is mineral in character will not vitiate the claim unless it is established that the original finding of nonmineral character was error, and that facts in existence at the time equitable title passed required a determination that the land was then mineral. Due process permits such action to be taken only after proper notice and opportunity for hearing.

A selection of land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

Equitable adjudication authority is not appropriate and may not be applied to permit filing of a homesite notice of location after the land has been withdrawn.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

There can be no "valid existing right" in a claimant of a headquarters site on land withdrawn by PLO No. 4582 unless a notice of location or application to purchase had been filed in accordance with the Act of Apr. 29, 1950. The filing of an application for a survey of omitted land did not by itself create any preference rights to the land.

Notices of location for headquarters sites must be accepted for filing by the authorized Bureau of Land Management office if the land has been subject to location during the preceding 90 days. The fact that land had been omitted from the original survey is not a valid reason for the Bureau of Land Management to refuse to record a properly filed notice of location for a headquarters site.

An application to purchase a headquarters site is subject to rejection if it is filed after the 5-year period from the filing of a notice of location of the claim, or, if no notice had been filed, it was filed more than 90 days after the land has been withdrawn.

Equitable adjudication is not appropriate where a headquarters site applicant has not substantially complied with the law.

Ray W. Ferguson, 22 IBLA 160 (Sept. 30, 1975)

Where the claimant of a headquarters site filed his notice of location, occupied the land, and began making improvements thereon prior to the segregation of the land by a withdrawal made subject to valid existing rights, it is error for the Bureau of Land Management to refuse to record the claimant's notice of location, or to cancel the claim without notice and an opportunity for hearing.

Donald J. Thomas, 22 IBLA 210 (Oct. 15, 1975)

An applicant for a headquarters site patent is required to prove that he, or his employer, is engaged in a trade, manufacture, or other "productive industry," for which applicant uses the site as a headquarters personally (or by an employee, if the applicant is in business); the conduct of an enterprise from the site by a third party renting the site and the improvements of the applicant does not qualify.

John H. Huber, Frances L. Huber, 22 IBLA 216 (Oct. 15, 1975)

A headquarters site claim is invalid when occupancy of the site was initiated more than 90 days prior to the filing of a notice of location and an intervening State selection application has segregated the land.

William G. Fairbanks, 22 IBLA 255 (Oct. 23, 1975)

The mere filing of a notice of location for a headquarters site under 43 U.S.C. § 687a (1970) does not establish rights to land. If a claimant cannot also demonstrate the necessary use and occupancy of the site prior to the effective date of a withdrawal and establish a right of purchase, he does not have a "valid existing right" excepted from the withdrawal, and the withdrawal attaches to the land in the site.

Stephen P. Sorensen, 22 IBLA 258 (Oct. 24, 1975)

The filing of a notice of location for a headquarters site does not prevent a withdrawal from attaching to the land prior to the time the locator of the headquarters site performs the requisite acts with respect to use and occupancy necessary to establish the right to purchase.

A headquarters site claim located prior to a withdrawal may be declared invalid by the Bureau of Land Management without awaiting the filing of a patent application where there has been insufficient compliance with the law to appropriate the land before the withdrawal. However, the Bureau should follow appropriate procedures. These should include giving notice to the claimant to show cause why the claim should not be invalidated where the notice of location does not show adequate compliance with the law sufficient to preclude the withdrawal, and initiating a contest and affording an opportunity for a hearing where there are disputed facts on the compliance with the law.

Richard T. Epps, 22 IBLA 374 (Nov. 17, 1975)

A notice of location filed under the Alaska settlement law, 43 U.S.C. § 687a (1970), regular on its face, for land which is open to such settlement and location, is acceptable for recordation. If a withdrawal follows the filing of a notice of location, the proper inquiry is into the validity of the claim, *i.e.*, whether the locator has by acts of settlement and improvement established a valid existing right protected from the effect of the withdrawal.

When an appellant from a decision canceling a headquarters site claim does not assert facts which, taken as true, would constitute the initiation of a claim protected from the effect of a withdrawal, the appellant is not entitled to notice and a hearing on the factual issues pertaining to the establishment of a valid existing right.

An asserted headquarters site claim is not protected from the effect of a withdrawal by assertion of improvements: which are not directed toward the establishment of a *headquarters* on the site; which are made under a prior location on the same land; and for which it appears credit cannot be given because the notice of location was not filed within 90 days of the initiation of such improvements (43 U.S.C. § 687a-1 (1970)).

Mary C. Polen, 24 IBLA 100 (Mar. 1, 1976)

ALASKA--Continued

HEADQUARTERS SITES--Continued

A settlement claim initiated after a State selection application is filed and the land segregated from appropriation creates no rights in the settler.

Any right gained under a notice of location for a trade and manufacturing site or a homesite as required by the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), is personal to the party filing the notice.

John W. Eastland et al., 24 IBLA 240 (Mar. 25, 1976)

A selection of available land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location. A subsequently filed notice of location for a headquarters site has no effect.

Wilfred S. Wood (On Reconsideration), 25 IBLA 37 (May 6, 1976)

One who files an application to purchase a headquarters site claim has the burden of showing compliance with 43 U.S.C. § 687a (1970), and the applicable regulations in order to establish entitlement to the land.

A headquarters site application is properly rejected where the appellant fails to produce any probative evidence that the land claimed as a headquarters site was used in connection with a productive industry within the meaning of the headquarters site law.

Gustav O. Wiegner, 26 IBLA 123 (July 30, 1976)

An applicant to purchase either a trade and manufacturing site or a headquarters site has the burden of proving that he has complied with the requirements of the law, 43 U.S.C. § 687a (1970). Rejection of such an application is proper where the evidence shows that the tract was used (1) for trapping by the applicant to repay a neighbor for assistance in improving the site, and (2) as a wilderness camp area, and that no substantial revenue was derived from the trapping, and nominal revenues were derived from camping tourists in the park during the life of the claim.

Where an applicant to purchase a trade and manufacturing site or a headquarters site states he was frustrated in completing his improvements and showing sufficient use of the land as required by the law because of more difficult or complex problems than anticipated, but has not shown that this operation could reasonably be expected to be successful, such problems will not afford any basis for equitable adjudication of his application to purchase.

United States v. Ronald E. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

A headquarters site applicant has the burden of establishing entitlement to the land by showing compliance with the law. 43 U.S.C. § 687a (1970). Where such an applicant asserts that he operates a trapping business from the site, yet fails to produce sufficient evidence to show that he was engaged in trade, manufacture or other productive industry from which he reasonably hoped to derive a profit, the application to purchase must be rejected.

United States v. Charles Thomas Beaird, 31 IBLA 203 (July 6, 1977)

ALASKA--Continued

HEADQUARTERS SITES--Continued

The filing of a notice of location for a headquarters site or a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John D. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

Applicant has burden of establishing entitlement to headquarters site claim, and must demonstrate that he has complied with statute and regulations.

In contest hearing on headquarters site claim, evidence must be submitted from which it can be concluded that applicant was engaged in actual business operation from which he reasonably hoped to derive a profit.

Where evidence showed that in 5 years during which applicant was allowed to prove up headquarters site, applicant went out trapping only "four or five times" in 1970 and again in 1971, did not realize more than $20 from sale of pelts but did retain a lynx pelt and two beaver pelts for himself, administrative law judge properly rejected application to purchase headquarters site under 43 U.S.C. § 687a (1970).

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 18, 1978)

Without adequate proof of a tender of a notice of location or application to purchase a headquarters site which was wrongfully denied by Bureau of Land Management personnel prior to a withdrawal of the land, the mere occupancy of land prior to the withdrawal did not create a "valid existing right" excepted from the effect of the withdrawal, and an application to purchase a headquarters site filed after the withdrawal is properly rejected.

Equitable adjudication of an application to purchase a headquarters site claim filed at least 8 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

That part of a decision rejecting a headquarters site purchase application which requires the applicant to remove his improvements from the site within 90 days may be set aside and the case remanded to the Alaska State Office to determine whether a temporary use permit can be granted authorizing continued use of the improvements.

Rene E. Lamoureux d/b/a Frenchy Lamoureux, 39 IBLA 36 (Jan. 15, 1979)

ALASKA--Continued

HEADQUARTERS SITES--Continued

An entryman may not take advantage of sec. 7 of the Act of Mar. 3, 1891, entitling an entryman to a patent after 2 years from date of issuance of a receiver's receipt when there is no pending contest or protest against the validity of the entry, where he has not shown that preconditions of the Act have been met, *i.e.*, making the final payments required.

In a contest proceeding the Government has the burden of establishing a prima facie case of noncompliance with the requirements for trade and manufacturing, and headquarters sites. The burden then shifts to the applicant to show by a preponderance of the evidence that he has used, occupied, and improved the sites for trade, manufacture, or other productive industry.

A claimant of a trade and manufacturing site must show that at the time of filing his application to purchase he was engaged in trade, manufacture, or other productive industry in connection with the sites. While it is not necessary for the claimant to show that all functions of the business were carried on at the site, he must show a bona fide commercial enterprise from which he reasonably hoped to derive a profit; mere preparation for a prospective business is not sufficient under the regulations. A claimant for a headquarters site must also be engaged in such a business or be an employee of such a business.

United States v. Jack Zemry Boyd, Jr., 39 IBLA 321 (Feb. 27, 1979)

Applicant has burden of establishing entitlement to headquarters site claim, and must demonstrate that he has complied with statute and regulations.

In contest hearing on headquarters site claim, a contestee, to prevail, must submit evidence from which it can be concluded that he was engaged in an actual business operation from which he reasonably hoped to derive a profit, or is an employee of a qualified business.

Where evidence showed that in 5 years during which applicant was allowed to prove up headquarters site applicant realized $152 from trapping, and where other claimed uses were construction of runways and base camp for hunting and fishing parties, but there was no clear information as to extent of operations or returns derived from these uses, administrative law judge properly rejected application to purchase headquarters site under 43 U.S.C. § 687a (1970).

United States v. Henry Jay Bush, 40 IBLA 106 (Mar. 27, 1979)

Any right which may be gained under a notice of location for a trade and manufacturing site or a homesite, as required by the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1976), is personal to the party filing the notice.

James Sims, 42 IBLA 231 (Aug. 22, 1979)

HOMESITES

Under the Homesite Act of May 26, 1934, 48 Stat. 809, 43 U.S.C. § 687a (1970), an applicant must occupy land in a habitable house not less than 5 months each year for 3 years. Even if a 2-year credit is allowed for military service there must be 5 months of occupancy for 1 year. Totaling lesser periods of occupancy over a number of entry years is not sufficient to meet the requirement.

An applicant's statement that he resided on a homesite claim only on weekends for a substantial portion of a 5-month period does not constitute the 5-month's occupancy required for a homesite under the Act of May 26, 1934, and an application which shows on its face that the requirements have not been met is properly rejected.

Prince A. Ryan, Jr., 18 IBLA 286 (Jan. 2, 1975)

Where request for reconsideration of Bureau of Land Management 1968 homesite decision is taken in 1974, appellant stating he was never served with decision, but where receipt in record shows service in 1968, reconsideration should be denied.

Hollis E. Justis, 21 IBLA 63 (June 25, 1975)

A claimant's occupancy of a homesite prior to a withdrawal does not establish a "valid existing right," excepted by the withdrawal, under the Act of Apr. 29, 1950, where claimant did not file his notice of location within 90 days after occupancy, nor did he file a notice of location or purchase application prior to the withdrawal.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

Location of a homesite claim without substantial use or occupancy of the land in compliance with the law creates no property interest in the land. Where the claimant under sec. 10 of the Act of May 14, 1898, *as amended*, 43 U.S.C. § 687a (1970), has merely marked the boundaries of the claim prior to a withdrawal of the land, such activity does not constitute occupation or possession of the land and the claim will be defeated by that withdrawal.

A notice of location for a homesite which alleges only acts of occupancy and improvement insufficient to create any interest in the land is properly denied recordation.

Edward P. Dooley, 22 IBLA 338 (Nov. 14, 1975)

The filing of a notice of location for a homesite will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator of the homesite fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right excepted from a withdrawal.

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and alleges that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the Bureau of Land Management to hold that the location notice was unacceptable for recordation, and the claim may only be canceled following notice to the claimant and an opportunity to demonstrate the establishment of a valid existing homesite claim prior to the withdrawal.

Steven P. Remme, 24 IBLA 23 (Feb. 11, 1976)

A settlement claim initiated after a State selection application is filed and the land segregated from appropriation creates no rights in the settler.

Any right gained under a notice of location for a trade and manufacturing site or a homesite as required by the

ALASKA--Continued

HOMESITES--Continued

Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), is personal to the party filing the notice.

John W. Eastland et al., 24 IBLA 240 (Mar. 25, 1976)

The amendment of a notice of location of a homesite in Alaska may be allowed where the application is filed within the life of the 5-year period granted, and where the amendment embraces lands which the applicant has actually occupied and possessed.

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and he alleges, and the field reports so indicate, that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the State Office to hold that the withdrawal terminated the claimant's rights.

Sandra L. Lough, Damon H. Blackburn, 25 IBLA 96 (June 3, 1976)

It is improper for a District Office to find a notice of location for a homesite unacceptable for recordation when the location notice is regular on its face and the land was open to location at the time the notice was filed.

The filing of a notice of location for a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

George T. Beck, 31 IBLA 363 (July 28, 1977)

The filing of a notice of location for a headquarters site or a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John D. Ketscher, Alfred I. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

Native occupancy and use commenced at a time when land is withdrawn from settlement, location, sale, or entry provides no basis for a Native allotment. Withdrawal of the land in 1940 by Exec. Order No. 8344, inclusion of the land in a grazing lease and homesite, and the subsequent selection of the land by the State of Alaska in 1966 have effectively kept the land closed to the initiation of rights under the Act of May 17, 1906, at all times during the period from 1940 to Dec. 18, 1971, when the Act was repealed by the Alaska Native Claims Settlement Act.

Although the Department has adhered to the principle of protecting Indian occupancy on public lands, it also has the responsibility of protecting rights of others to public land tenure, including persons who have been granted grazing leases under the Alaska Grazing Act of Mar. 4, 1927, *as amended*, 43 U.S.C. §§ 316, 316a-316o (1976).

Milton D. Pagano, 41 IBLA 214 (June 27, 1979)

Any right which may be gained under a notice of location for a trade and manufacturing site or a homesite, as required by the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1976), is personal to the party filing the notice.

James Sims, 42 IBLA 231 (Aug. 22, 1979)

HOMESTEADS

Settlement on a homestead claim in Alaska 2 days prior to a withdrawal of the land does not except the land from the withdrawal where the claimant failed to file his notice of location within 90 days after settlement as required by the Act of Apr. 29, 1950, 64 Stat. 94, 43 U.S.C. §§ 270, 270-5, 270-6 (1970), and his notice is properly held to be unacceptable for recordation.

Gary Lee Slay, 18 IBLA 345 (Jan. 14, 1975)

A notice of location for homestead settlement on lands applied for as a state selection under the Alaska Statehood Act is unacceptable for recordation.

Conrad S. Huckins et al., 18 IBLA 357 (Jan. 22, 1975)

Stanley Ray Hunt, 19 IBLA 259 (Mar. 31, 1975)

An application for a second homestead entry under the Act of Sept. 5, 1914, is properly rejected in the absence of sufficient showing that the applicant lost, forfeited, or abandoned the original entry through no fault of his own or because of matters beyond his control.

Arthur Lloyd Zellweger, 19 IBLA 118 (Mar. 5, 1975)

The breaking, planting, or seeding and tillage for a crop which constitute cultivation of the soil of a homestead entry must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

Where it appears that land has been hand seeded and rolled with a log in a similar manner as used on other homestead entries in the area, and where it is not established that such seeding and rolling is not an unreasonable practice for the type of land and weather conditions involved, the entryman's acts may be found to have been calculated to produce profitable results, notwithstanding his efforts failed to produce a useful crop.

A charge that the entryman failed to cultivate the required acreage in the second entry year is not sustained where the contestant's evidence consists mainly of a general statement by a few persons concluding that the entryman's mode of cultivation was inadequate. In the face of testimony to the contrary by contestee's witnesses which leaves the evidence in equipoise, contestant has not met his burden of convincingly establishing the fact of the entryman's failure to cultivate in the second entry year.

Thomas B. Kimball v. William Henry Selby, 20 IBLA 23 (Apr. 16, 1975)

Where a homestead claimant submits a final proof which shows on its face that he has not cultivated the full area required, and the record reflects that he has not qualified for military credit or reduction in the cultivation requirements, action rejecting final proof and canceling the claim may be suspended to permit the entryman to apply to purchase not more than 5 acres under the Homesite Act of May 26, 1934, failing which the proof will be finally rejected and the claim canceled.

James R. Murphey, 20 IBLA 129 (May 5, 1975)

The land in an additional homestead entry application under the Act of Apr. 28, 1904, as amended, 43 U.S.C. § 213 (1970), must be contiguous to the applicant's original homestead. Neither that Act nor regulations issued thereunder require that tracts of land in such an additional entry application be contiguous to each other. The requirement of 43 CFR 2567.1(c) that land in a homestead entry application in Alaska must be in a contiguous body is maintained by the fact that the land in the additional entry must be contiguous to the original homestead.

John C. Briggs, 22 IBLA 8 (Sept. 4, 1975) 82 I.D. 432

A homestead notice of location filed for lands open to location is acceptable for recordation. Where a homestead settler has marked the corners of his claim by posts prior to a withdrawal subject to valid existing rights, the claim survives the withdrawal if the location notice requirements have been satisfied.

Robert A. Bice, Jr., 22 IBLA 291 (Nov. 3, 1975)

A private contest brought against an Alaskan homestead entry charging that the entryman failed to meet the minimum cultivation requirements for the second entry year must be dismissed when it is disclosed that such information was of record in the Bureau of Land Management office at the time the complaint was filed.

Olan W. Christie v. Larry E. O'Glesbee, 23 IBLA 155 (Dec. 23, 1975)

In proper circumstances, the issuance of an order to show cause why final proof should not be rejected and entry canceled, is within the discretionary authority of the Bureau of Land Management in adjudicating a homestead application.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) an order to show cause why final proof should not be rejected and entry canceled, which order requires the showing of a material fact, is considered a contest or protest.

The showing of "kind of crop planted" and "quantity of crop harvested" are reasonable requirements for final proof submitted for an Alaska homestead.

"Final entry." When an amended homestead final proof has been submitted, the term "final entry" in the proviso in sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098,

as amended, 43 U.S.C. § 1165 (1970) refers to the submission, to the proper officials, of the amended final proof and required fees.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) which requires issuance of a patent 2 years after receipt upon final proof for a homestead entry, a contest against an entry should not be dismissed where the complaint was filed within 2 years following the submission of additional affidavits amending the entryman's deficient final proof, despite the fact that the receipt in connection with the deficient proof had been issued more than 2 years before filing of the complaint and the receipt had never been canceled or a new receipt issued.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

The filing by a qualified applicant of a homestead application to enter unappropriated surveyed lands in Alaska segregates the land covered by the application from appropriation. Such an application will be considered to have created a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Pursuant to 43 CFR 2567.5(a)(1), a homestead entryman in Alaska must establish residence upon the land within 6 months of the date of allowance of the entry or within a maximum period of 12 months, if a 6-month extension of time was requested and granted. These periods do not commence at the time of the filing of the application.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

The filing by a qualified applicant of an application for an allowed homestead entry of land which is open and available to such entry at the time of filing will operate to segregate the land from subsequent appropriation and invest the applicant with sufficient interest therein to preserve the land from the effect of a subsequent withdrawal which is made subject to valid existing rights.

Richard T. Pope, 27 IBLA 33 (Sept. 20, 1976)

To establish residency on a homestead there must be the intent to make the desired public lands the entryman's home, and also the intent to no longer have a home at the former residence; the law permits an entryman to have two residences, but he may have only one home.

An entryman who, at the time he seeks to establish residence on the entry, owns a house which he leases furnished for 6 and 1/2 months and to which he returns a few days after he has completed the required 7 months on the entry did not establish his home on the entry in good faith, and thus has not met the residence requirement of the homestead law.

A homestead entry made with no intention of establishing a permanent bona fide home on the entry, but merely with a view to submitting a showing sufficient to support occupancy for the briefest time permitted under the law must be canceled, notwithstanding the proof offered shows full technical compliance with respect to inhabitancy of the land for the period required by the law.

Cultivation of a homestead entry must include the breaking, planting or seeding and tillage for a crop and be done in such a manner as to be reasonably calculated to produce profitable results.

The acts performed in attempted satisfaction of the cultivation requirements of the homestead law must be done in good faith seeking to establish a profitable agricultural operation on the entry.

An entryman who performs the minimum acts of cultivation, and seeds late in the last growing season and soon thereafter files final proof, who does not visit the entry to see the results of his attempts or pursue any further agricultural activity on the entry, and who does not establish that he had a market or use for the crop he could have grown, and where the results are meager, has not demonstrated that he made a good faith attempt to comply with the agricultural requirements of the homestead act.

United States v. Leonard E. Nelson (Supp. I), 28 IBLA 314 (Jan. 14, 1977)

Where a homestead entryman has cleared and broken ground and allowed a portion of the cleared, plowed acreage to grow up with a species of native wheat grass, such acreage is not "cultivated" within the meaning of 43 CFR 2567.5(b), and the entryman's final proof is properly rejected where it shows on its face that the native grass acreage constituted an indispensable portion of the entryman's attempt at meeting the cultivation requirements of the homestead laws. Since there was not substantial compliance with the cultivation requirements, equitable adjudication cannot be properly invoked.

Clarence Ray Mathis, 29 IBLA 150 (Mar. 4, 1977)

A request to reconsider a 1968 decision by the Department rejecting final proof for a homestead entry and canceling the entry is properly rejected in the absence of a showing of "extraordinary circumstances." In the absence of compelling legal or equitable reasons for reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Where a homestead entry has been located on land later included within a withdrawal "subject to valid existing rights," the withdrawal attaches to the land within the homestead upon cancellation of the entry. An amendment of a homestead entry cannot include lands within a canceled adjoining entry to which a withdrawal has attached.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

Where the initial actions of a homesteader are inconsistent in that he appears to initiate his claim both by settlement and by application for allowed entry, the nature of his claim will be determined by the type of official form used by him to initiate the claim, and by his actions with regard thereto.

Where a homestead in Alaska is initiated by an application for allowed entry, the filing of the application creates a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Where a homestead in Alaska is initiated by an application to enter, the statutory period for compliance with the requirements of the homestead laws begins to run on the date of allowance of the entry.

A contest complaint is properly dismissed where the only basis for cancellation of the homestead suggested by it is failure to comply with the residence and cultivation requirements of the homestead law, and where

the time for compliance with these requirements by the entryman has not yet begun.

John Anthony Coggle v. Robert L. Wetherelt, 30 IBLA 311 (June 6, 1977)

Where a notice of location of settlement claim is filed covering land which is not available for entry, the notice must be rejected and cannot be suspended to await the possible restoration of the land to entry.

A powersite classification effects withdrawal of lands to the full extent described therein as of publication in the *Federal Register*, even if the extent of the land withdrawn by it is not accurately entered subsequently on land-status maps, and, notwithstanding this error, lands classified by it are withdrawn under sec. 24 of the Federal Power Act from settlement under the homestead laws, so that a notice of location settlement claim and final proof concerning these lands is properly rejected.

By regulation, final proof of compliance with the homestead laws must be filed within 5 years, failing which the homestead is subject to cancellation, although, in proper cases the time for filing final proof may be extended. However, the statutory life of a homestead claim or entry cannot be extended beyond 5 years, during which time all other requirements must be performed. An extension of the time for filing final proof is not an extension of the time for performing acts of compliance.

A homestead claimant who contracts for the planting of "enough acreage to satisfy the homestead law" in an essentially worthless hay crop in an area of Alaska where there are no livestock, and with no intention to harvest or utilize it even though it successfully matured, has performed only a token compliance which is, prima facie, demonstrative of bad faith. A good faith devotion of the land to productive and profitable agricultural use is essential to satisfy the purpose and intent of the agricultural land entry laws.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John D. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

The rejection of a homestead application in Alaska merely because there are prior-filed homestead applications for the same land is improper and premature where no action has been taken on the conflicting applications. If a prior-filed application is allowed, the land comes within an allowed entry of record and a junior application must be rejected thereafter. However, if the prior application is rejected or withdrawn, it no longer bars allowance of a junior application.

A homestead claimant in Alaska may be given credit for residence, cultivation and improvements after the time

ALASKA--Continued

HOMESTEADS--Continued

his homestead application is filed but before allowance of entry where the land was subject to appropriation by him or included in an entry against which he had initiated a contest resulting in cancellation of the entry.

"Subject to appropriation by him." The provision in 43 CFR 2511.4-2(a) permitting credit for residence and cultivation by a homestead entryman before the date of entry if during that period the land was "subject to appropriation by him" does not refer to land for which there were prior-filed homestead applications which are subsequently withdrawn or rejected. Therefore, until action is taken on prior-filed applications, final proof filed by a junior homestead applicant should not be rejected merely because the land is subject to the prior applications.

The mere fact homestead final proof in Alaska is filed before allowance of the homesteader's application for entry does not preclude consideration of the final proof if entry is allowed.

John B. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

Where the only properly corroborated fact alleged by private contestant related to situs of contestee's residence in 1975 and thereafter, but precomplaint record included assertion by contestee that he lived on homestead in 1972, 1973, and 1974, the contestant has not thereby alleged facts which, if proved, would require cancellation of entry, and contest must be dismissed under 43 CFR 4.450-5(a).

Although in his summary dismissal of private contest against homestead entry administrative law judge discussed issues upon which contestant had failed to submit corroborated allegations of fact along with his complaint, such action by judge did not relieve contestant of his burden of filing corroboration, despite provisions of 43 CFR 4.450-4(b) allowing judge to "raise issues in connection with deciding a contest."

Administrative law judge properly dismissed without a hearing a private homestead entry contest in which complaint failed to allege corroborated facts which, if proved, would provide sufficient basis for cancellation of entry.

Where contestant in private homestead entry contest appeals to Board of Land Appeals and makes certain assignments of error by administrative law judge, but allegations of fact upon which those assignments are based were not corroborated at filing of contest complaint, and issues raised by those assignments were not raised in complaint, such assignments are not material for purposes of appeal to the Board.

Ernest C. Lamb v. Richard B. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

A summary dismissal of a private contest against an Alaska homestead becomes a final administrative ruling on that contest when the contestant, instead of appealing the dismissal, files a second contest which must be considered an entirely new action. When a final departmental adjudication has been made, the doctrine of administrative finality, which is the administrative counterpart of the principle of res judicata, generally bars consideration of a new appeal arising from a later proceeding involving the same homestead and the same issue.

A private contest brought against an Alaska homestead charging that the entryman had failed to meet any of the residence or cultivation requirements of the law must be dismissed where the statutory life of the entry has previously expired without the entryman filing final proof and information was already of record

ALASKA--Continued

HOMESTEADS--Continued

in the BLM office that the entryman had done nothing during the life of the entry to perfect the claim. 43 CFR 4.450-1.

Joe C. Amberger, 43 IBLA 178 (Sept. 28, 1979)

INDIAN AND NATIVE AFFAIRS

Prior to the conveyance of any land pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 (1970)) (ANCSA) the Secretary must make a determination of which public easements are necessary and the Secretary must reserve those easements in the conveyance.

The Secretary has authority to reserve public easements in conveyances under ANCSA (43 U.S.C. § 1601 (1970)) other than those easements identified and recommended by the Joint Federal State Land Use Planning Commission.

The authority of the Secretary to reserve easements in conveyances under ANCSA is not limited to those public easements specifically listed in sec. 17(b)(1) of that Act.

The Secretary is not limited to reservation of easements in conveyances under ANCSA which cross the patented lands from one boundary to another. The easements may be for uses within the patented lands.

Easement Reservations in Conveyances to Alaska Native Corporations Under ANCSA, M-36880 (July 8, 1975)
82 I.D. 325

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 while the grazing lease was still extant, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Herman Haakanson, 23 IBLA 54 (Dec. 4, 1975)

Settlement on land in Alaska which is subject to a grazing lease issued under the Alaska Grazing Act of Mar. 4, 1927, 43 U.S.C. §§ 316, 316a-316o (1976), does not create any rights by virtue of such settlement under the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed by 43 U.S.C. § 1617 (1976), since such land is segregated from adverse appropriation at least until the Department takes action to cancel the grazing lease *pro tanto*, but the grazing lease does not preclude the filing of a State selection application which, when filed, segregates the land from all appropriation based upon settlement or location.

Floyd L. Anderson, Sr., 41 IBLA 280 (June 28, 1979)
86 I.D. 345

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on

ALASKA--Continued

INDIAN AND NATIVE AFFAIRS--Continued

Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Norman Opheim, Billy Boskofsky, Jr. (As Heir of Nicholas Boskofsky), 41 IBLA 338 (July 11, 1979)

LAND GRANTS AND SELECTIONS

Generally

A selection application by the State of Alaska must be rejected where all of the applied for land is withdrawn from State selection.

State of Alaska, 18 IBLA 351 (Jan. 15, 1975)

A notice of location for homestead settlement on lands applied for as a State selection under the Alaska Statehood Act is unacceptable for recordation.

Conrad S. Huckins et al., 18 IBLA 357 (Jan. 22, 1975)

Lands withdrawn by sec. 11(a)(1) & (2) of the Alaska Native Claims Settlement Act are subject to selection by qualified Native villages notwithstanding the prior tentative approval of selections of those lands by the State of Alaska pursuant to the Statehood Act.

Where the State of Alaska had received tentative approval of a land selection and had granted a patent to a third party in accordance with § 6(g) of the Alaska Statehood Act, and where the State patent was granted before the enactment of the Alaska Native Claims Settlement Act, with the express approval of the various Native groups then concerned, a Native village may not later select those lands pursuant to the Alaska Native Claims Settlement Act, as a valid third party right to the land had already been created.

Where statute and regulation provide that lands selected by the State of Alaska must be surveyed before patent can issue, but no similar requirement has been imposed as a precondition to the conveyance of lands selected pursuant to the Alaska Native Claims Settlement Act, the State's contention that this disparity is discriminatory will not afford a basis for reversing a decision which rejected a State selection application in favor of a conflicting Native village selection.

The fact that filing fees are required as a condition precedent for State selections and are not required for Native village selections pursuant to the Alaska Native Claims Settlement Act is not a basis for vacating a decision awarding lands to the Native villages.

State of Alaska, 19 IBLA 178 (Mar. 18, 1975)

The filing of a State selection under the Alaska Statehood Act does not create a right that prevents a Native village from selecting those lands under the terms of the Alaska Native Claims Settlement Act.

State of Alaska, 19 IBLA 242 (Mar. 27, 1975)

Under 43 CFR 2091.6-4 and 2562.1(d) a notice of location for a trade and manufacturing site is unacceptable for recordation where the land is not subject to that form of disposition because it has been segregated by State selection applications.

Lloyd Schade, 19 IBLA 251 (Mar. 31, 1975)

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

The filing of a State selection application under sec. 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, 48 U.S.C. notes prec. § 21 (1970), does not create a right that prevents a Native Village from selecting those lands under the provisions of the Alaska Native Claims Settlement Act of Dec. 18, 1971, 85 Stat. 688, 43 U.S.C. §§ 1601-1624 (Supp. III 1973).

Whether village selections authorized by the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. III 1973), constitute an unwarranted vitiation of the State selection provisions of the Alaska Statehood Act, 48 U.S.C. notes prec. § 21 (1970), and of the Compact of Admission to the Union, is beyond the consideration of this Board.

State of Alaska, 19 IBLA 316 (Apr. 7, 1975)

Oil and gas lease applications, action on which was suspended under PLO 4582, 34 FR 1025 (1969), are properly rejected when the lands are subsequently patented to the State of Alaska under selection application even though the latter postdate the oil and gas lease applications; the first qualified oil and gas lease applicant has no right or interest in the land applied for which is protected by the savings clauses of the Alaska Statehood Act and the Alaska Native Claims Settlement Act.

Haruyuki Yamane et al., 19 IBLA 320 (Apr 7, 1975)

Under the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 181 *et seq.* (1970), the first qualified applicant has a preference right to receive an oil and gas lease where the Department of the Interior has in the exercise of its discretion, determined to issue such a lease. But a lease offer does not create a vested interest where there has been no determination to lease the lands embraced in the lease offer. In the latter instance, the application for a lease is a hope or expectation rather than a valid claim against the Government, and the lease offeror has acquired no rights which are violated by issuance of a patent to the State of Alaska for the lands embraced in the lease offer.

Published notice of a proposed State selection in accordance with regulatory requirements is adequate notice to all persons claiming the lands adversely to the State.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

Published notice of a proposed State selection in accordance with regulatory requirements is adequate notice to all persons claiming the lands adversely to the State.

Sec. 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims does not apply to an oil and gas lease offer filed pursuant to the Mineral Leasing Act of 1920. While an oil and gas lease offeror may have a right to a lease where the Department has exercised its discretion to issue a lease, and the offeror is entitled to a statutory priority right over other offerors, his application does not rise to the level of a "claim" or "right" within the savings clause of the Alaska Statehood Act where there has been no such determination to lease.

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

The Department of the Interior has neither jurisdiction over nor authority to issue oil and gas leases for lands patented to the State of Alaska.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975)
82 I.D. 174

A selection of land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

A selection application by the State of Alaska must be rejected with respect to those public lands which are reserved or withdrawn from entry or other form of disposal under the public land laws of the United States and cannot be held open pending a possible future change of the status of the land.

State of Alaska, 20 IBLA 341 (June 11, 1975)

The mere filing of a noncompetitive oil and gas lease offer does not invest the offeror with any right to receive a lease. The only right created thereby is the right to an appropriate priority of consideration if, at the discretion of the Department, an oil and gas lease is to be issued for the land which is the subject of the offer, but it will not preclude the filing of a subsequent State selection application, nor bar approval of the State's application and the issuance of a patent to the State.

Yukon Service, Inc., 22 IBLA 220 (Oct. 15, 1975)

A selection filed by the State of Alaska under its Statehood Act segregates the land from all appropriations based on settlement and location when the application is accepted by BLM and posted to the appropriate land status records. A Native allotment application is properly rejected where applicant fails to show occupation and use prior to the filing of an acceptable State selection application.

Martha Isaac, 22 IBLA 224 (Oct. 15, 1975)

A headquarters site claim is invalid when occupancy of the site was initiated more than 90 days prior to the the filing of a notice of location and an intervening State selection application has segregated the land.

William G. Fairbanks, 22 IBLA 255 (Oct. 23, 1975)

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

A Native allotment application is properly rejected where application fails to show occupation and use prior to the filing of a State selection application.

Louise Luke, 22 IBLA 388 (Nov. 24, 1975)

The filing of an amended Alaska State Selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Klatt, Allan D. Klatt, 23 IBLA 59 (Dec. 11, 1975)

A selection application, filed by the State of Alaska under its Statehood Act, segregates the land from all appropriations, including those based on settlement and location, when the application is filed. A Native allotment application is properly rejected where it fails to show use and occupancy initiated prior to the filing of the State selection application.

William B. Tennyson, Jr., 23 IBLA 77 (Dec. 12, 1975)

An appeal will be summarily dismissed when the appellant fails to serve upon all persons required to be served, copies of the Notice of Appeal and other documents filed with the Board in support of its appeal.

43 CFR 4.905, providing for summary dismissal of an appeal for failure to file or serve, upon all persons required to be served, a notice of appeal, statement of reasons, or of standing, merely expresses the inherent authority of the administrative appeals board under 43 CFR Part 4, Subpart G, and, therefore, may be applied to appeals filed prior to the effective date of sec. 4.905, after notice and opportunity to comply with an order of the Board requiring service upon particular persons.

Appeal of Nee-Yea-Lingde Corp., 1 ANCAB 13 (Dec. 29, 1975)

Sec. 14(h)(5) of the Alaska Native Claims Settlement Act establishes a mandatory deadline for applications for a primary place of residence, which may not be waived in the exercise of Secretarial discretion.

Appeal of Theodore M. Witham, 1 ANCAB 20 (Dec. 29, 1975)
83 I.D. 445 (1976)

A selection filed by the State of Alaska segregates the land from all appropriations when the State files its application to select. A Native allotment application is properly rejected where applicant fails to show substantial use and occupancy of the land prior to the filing of a State selection application independently for himself or as the head of a family, and not as a minor child occupying or using the land in company with his parents or ancestors.

Daniel Johansen, 23 IBLA 292 (Jan. 12, 1976)

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

A selection of available land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location. A subsequently filed notice of location for a headquarters site has no effect.

Wilfred S. Wood (On Reconsideration), 25 IBLA 37 (May 6, 1976)

Where an application for an allotment by an Alaskan Native includes land in a State of Alaska selection application that has been tentatively approved to the State, and where the Native alleges occupancy and use from a date prior to the filing of the State selection, the allotment application may be granted, if the facts alleged are ultimately proved and the application is regular in all other respects.

Where the State of Alaska has applied to select certain land and has been given tentative approval of that selection, and thereafter a conflicting Native allotment application is filed which is supported only by meager evidence of use and occupancy, it is error to allow the allotment application and to cancel the State's tentative approval and reject the selection application without notice and an opportunity for a hearing in which the State may participate.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

Lands described in a State selection application under sec. 6(b) of the Alaska Statehood Act are segregated from all forms of appropriation including location under the mining laws from the time the application is filed in the proper office of the BLM. An amendment to a pre-existing application is effective to segregate the land described in the amendment from the time it is filed.

Dennis G. Quinn, 29 IBLA 307 (Mar. 30, 1977)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska, 41 IBLA 309 (July 5, 1979)

The Alaska Native Claims Settlement Act extinguished aboriginal occupancy claims of Alaska Natives; such claims cannot serve as a bar to a State selection, nor preclude the State from challenging Native allotment applications conflicting with its selection.

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

Under the "functional" standard to determine administrative standing set forth in *Koniag, Inc.* v. *Andrus*, 580 F.2d 601 (D.C. Cir. 1978), *cert. denied*, 99 S. Ct. 733 (1979), the State of Alaska has standing to challenge Native allotment applications conflicting with its selection applications even if the land is within a Native village selection area under the Alaska Native Claims Settlement Act. The State has standing under Departmental regulations to initiate private contests against such conflicting Native allotment applications.

State of Alaska selection applications should not be rejected because of conflicts with Native allotment applications which are to be approved without first affording the State notice of such action to be taken and an opportunity to contest the conflicting claims if it desires.

State of Alaska et al., 41 IBLA 315 (July 11, 1979)
86 I.D. 361

The State of Alaska has a sufficient interest in land by virtue of its applications for an airport conveyance or by its selection application to have standing to initiate private contests against conflicting Native allotment applications.

State of Alaska applications for prior-filed airport conveyances of land needed for an existing airport should not be rejected because of conflicts with Native allotment applications which are to be approved without first affording the State notice of such action to be taken and an opportunity to contest the conflicting claims if it desires.

State of Alaska, 42 IBLA 1 (July 25, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest, or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska et al., 42 IBLA 94 (Aug. 16, 1979)

"Public Lands." Land within an interim conveyance to a Native Corporation is no longer "public land" under the Federal Land Policy and Management Act nor subject to Bureau of Land Management jurisdiction to issue rights-of-way under that Act.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

John C. Schandelmeier, 42 IBLA 240 (Aug. 22, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Alaska Mental Health Enabling Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the determination to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings. If, however, the Board affirms the finding that the requirements of patent have been met, the State will have no further administrative recourse. Where the State had not, prior to its appeal, been afforded notice of the election, it should be afforded an opportunity to make such election.

A selection filed by the State of Alaska is subject to prior valid existing rights of Natives, irrespective of whether the State selection was filed pursuant to the Alaska Mental Health Enabling Act or the Statehood Act.

State of Alaska v. Mattie B. Bartos, 42 IBLA 269 (Aug. 27, 1979)

State of Alaska v. Daniel Johnson, 42 IBLA 370 (Sept. 11, 1979) 86 I.D. 441

The regulations in 43 CFR 2627.4(b) provide that lands applied for by the State of Alaska will be segregated from all appropriations when the State files its application to select. A State selection will not extinguish valid prior existing rights. When Alaskan Natives can prove prior qualifying use and occupancy of selected lands, tentative approvals by the Secretary of the Interior of State land selections must be canceled.

Sarah A. Pence et al., 43 IBLA 266 (Oct. 15, 1979)

Applications

A notice of location for homestead settlement on lands applied for as a State selection under the Alaska Statehood Act is unacceptable for recordation.

Stanley Ray Hunt, 19 IBLA 259 (Mar. 31, 1975)

An oil and gas lease offer must be rejected when approval is given to a subsequently filed State selection embracing the same lands, including the mineral rights. Following issuance of patent to the State, the Department loses jurisdiction over the patented land.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Applications--Continued

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first-qualified applicant in the event the Department decides to issue a lease.

Richard W. Rowe, Daniel Gaudiano, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

The notation on land office records of a noncompetitive oil and gas lease application does not prevent the State of Alaska from selecting the land pursuant to the Alaska Statehood Act.

Yukon Service, Inc., 22 IBLA 220 (Oct. 15, 1975)

In the absence of a timely appeal from a decision rejecting the State of Alaska's selection application for certain lands, the lands are no longer segregated from other disposition and a withdrawal of those lands may attach, precluding subsequent selection by the State.

State of Alaska, 22 IBLA 229 (Oct. 16, 1975)

The filing of an Alaska State selection for land in an Alaska grazing lease constitutes a petition for determination under 43 CFR 4131.3-1, and upon favorable determination and cancellation of the lease, the State's rights, including segregation of the land in its favor, relate back to the filing of the selection.

Native use and occupancy of land within an Alaska grazing lease does not preclude the State from selecting the land as "vacant and unappropriated" land within the meaning of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes prec. § 21 (1970). The initiation of use and occupancy subsequent to the segregation of the land in favor of the State gives an applicant no rights to an allotment.

Sandra M. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

Settlement on land in Alaska which is subject to a grazing lease issued under the Alaska Grazing Act of Mar. 4, 1927, 43 U.S.C. §§ 316, 316a-316o (1976), does not create any rights by virtue of such settlement under the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed by 43 U.S.C. § 1617 (1976), since such land is segregated from adverse appropriation at least until the Department takes action to cancel the grazing lease *pro tanto*, but the grazing lease does not preclude the filing of a State selection application which, when filed, segregates the land from all appropriation based upon settlement or location.

Floyd L. Anderson, Sr., 41 IBLA 280 (June 28, 1979) 86 I.D. 345

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Mental Health Lands

Sec. 4 of ANCSA states:
"(a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to sec. 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.
"(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.
"(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or State court or the Indian Claims Commission, are hereby extinguished."

The effect of the extinguishment of aboriginal claims by sec. 4 of ANCSA, as explained in the Conference Report (S. Rep. No. 92-581), 92d Cong., 1st Sess., 40 (1971) and interpreted by *Edwardsen* v. *Morton*, 369 F. Supp. 1359 (D.C. Cir. 1973), necessarily defeats arguments that Mental Health lands remained public lands based on assertions of aboriginal title.

Because Alaska acquired a present right or interest in Mental Health lands immediately upon proper selection of same, and because that interest effectively transfers ownership in the lands to the State, such lands can no longer be considered "public lands" within the meaning of sec. 3(e) and are unavailable for Native village selection under secs. 11(a)(1) and 12(a)(1) of ANCSA.

The authority to select lands under the Alaska Mental Health Enabling Act, while confirmed to the State under sec. 6(k) of the Statehood Act, remains separate and distinct from the authority of the State to select lands as provided in secs. 6(a) and (b) of the Statehood Act.

Lands properly selected under the Alaska Mental Health Enabling Act are not "lands * * * that have been selected * * * by the State under the Alaska Statehood Act" and are not available for selection by Native villages under secs. 11(a)(2) and 12(a)(1) of ANCSA.

Appeal of Seldovia Native Ass'n, Inc., 1 ANCAB 65
(July 1, 1976)
83 I.D. 461

A selection filed by the State of Alaska is subject to prior valid existing rights of Natives, irrespective of whether the State selection was filed pursuant to the Alaska Mental Health Enabling Act or the Statehood Act.

State of Alaska v. Mattie B. Bartos, 42 IBLA 269
(Aug. 27, 1979)

State of Alaska v. Daniel Johnson, 42 IBLA 370
(Sept. 11, 1979)
86 I.D. 441

Mineral Lands

Sec. 6(i) of the Alaska Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all the minerals in the lands so

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Mineral Lands--Continued

conveyed. The Act does not require that Federal patents to the State include a proviso to the above effect, rather, it is subsequent State conveyances which must contain a reservation for minerals.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975)
82 I.D. 174

Validity

Sec. 6(b) of the Alaska Statehood Act does not require that patents issued to the State include a proviso that the conveyed lands are vacant, unappropriated, and unreserved, and do not affect any valid existing claim, location or entry under the laws of the United States. The Department assures compliance with this provision by excluding from selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that adequate notice be given to all other persons claiming an interest in the selected land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands.

Sec. 6(i) of the Alaska Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all the minerals in the lands so conveyed. The Act does not require that Federal patents to the State include a proviso to the above effect, rather, it is subsequent State conveyances which must contain a reservation for minerals.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975)
82 I.D. 174

The filing of an amended Alaska State selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Klatt, Allan E. Klatt, 23 IBLA 59 (Dec. 11, 1975)

MINERAL LEASES AND PERMITS

Whether the issuance of PLO No. 5446, prohibiting oil and gas leasing in Alaska, without prior proposed rulemaking is violative of the Administrative Procedure Act or of the Alaska Native Claims Settlement Act need not be decided; by such issuance the Secretary has enunciated a policy of rejecting mineral lease applications well within his discretionary authority.

Bristol Bay Native Corp., 41 IBLA 85 (June 4, 1979)

MINING CLAIMS

A mining claim located on land in Alaska at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

Where the Bureau of Land Management records reveal that lands in Alaska have been withdrawn under PLO 5250 and certain of those lands have not been recommended, pursuant to sec. 17(d)(2)(C), Alaska Native Claims Settlement Act of Dec. 18, 1971, 43 U.S.C. § 1616(d)(2)(C) (Supp. IV 1974), for addition to or creation as units

ALASKA--Continued

MINING CLAIMS--Continued

of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems within 2 years of the date of the Act, such lands do not nevertheless become available for appropriation under the mining laws. This conclusion is compelled by the reason that PLO 5250 is based upon E.O. 10355, which not only invokes 43 U.S.C. §§ 141-142 (1970), but also the President's general or inherent authority to withdraw public lands completely from mining location.

Sally Lester et al. (On Reconsideration), 35 IBLA 61 (May 10, 1978)

NATIVE ALLOTMENTS

An application for an Alaska Native allotment must be rejected where the applicant failed to initiate use and occupancy prior to Dec. 18, 1971.

Schwalbe Nukwak, 18 IBLA 418 (Feb. 10, 1975)

Where an Alaska Native Allotment application pending in the Department on Dec. 18, 1971, is later amended to include new or additional lands, the amendment to the application will not be considered as timely filed and will be rejected. However, a correction of a description, where the site was not properly identified on protraction diagrams, may be permitted.

A decision of the Bureau of Land Management rejecting a Native Allotment application because the land is within an oil shale withdrawal will be set aside and remanded for further consideration where the Secretary of the Interior has directed the Geological Survey to review its mineral classifications in Alaska and the applicant requests an opportunity to present evidence to dispute the classification.

Raymond Paneak, 19 IBLA 68 (Feb. 25, 1975)

A grazing lease issued in 1933 for reindeer under the Act of Mar. 4, 1927, became subject to the Reindeer Act of Sept. 1, 1937, and rules and regulations thereunder. Interpretations of the effect of grazing rights granted under the 1937 Act upon a Native allotment applicant's claim of occupancy may be applied to such a lease, if they are not to the detriment of the lessee.

A regulation pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows settlement rights to be initiated while a permit issued under that Act is in existence. The policy manifest in that regulation may be followed, in the exercise of the Secretary's discretion, to permit consideration of a Native allotment applicant's occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of Mar. 4, 1927, and the regulation was promulgated after initiation of the occupancy.

Kristeen J. Burke, Joe N. Melovedoff, Victor Melovedoff, 20 IBLA 162 (May 5, 1975)

Lands withdrawn from appropriation under the nonmineral public land laws and lands within Alaska State selection applications are not open to the initiation of Alaska Native allotment claims.

An allotment right is personal to one who has fully complied with the law and regulations. A Native who applies for withdrawn lands must show that he did comply with the law prior to the effective date of withdrawal, and he may not tack on his deceased parents' use and occupancy to establish a right for himself prior to the withdrawal.

The Alaska Native Claims Settlement Act of Dec. 18, 1971, extinguished all aboriginal claims and rights of the Natives and terminated whatever aboriginal rights, if any, the Natives may have had.

Ann McPoise, David Lee Orbeck, Martha Anderson, 20 IBLA 169 (May 7, 1975)

Lands in Naval Petroleum Reserve No. 4 are not available for Alaska Native allotments.

Allie Kittick, Lena Mae Matoomealook, 20 IBLA 241 (May 15, 1975)

Ruth Agnasagga, Andrew Ekak, 21 IBLA 228 (July 31, 1975)

Paul Oarcoogak, 22 IBLA 90 (Sept. 22, 1975)

Withdrawn lands and lands closed to nonmineral entry are not open to appropriation under the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970). No rights may be initiated under the Alaska Native Allotment Act by occupation and use of lands not open to appropriation.

Anna Orbeck, Chris Roy Orbeck, Philip Katelnikoff, 20 IBLA 290 (May 27, 1975)

When a Native has initiated use and occupancy of land *prior* to the date of its classification under the Classification and Multiple Use Act of 1964, such classification will not constitute a bar to the completion of the statutory 5-year use and occupancy period, and the allotment may be granted, all else being regular, even though the classification remains in effect.

Katie Wassillie et al., 20 IBLA 330 (June 6, 1975)

Donald F. Nielsen, Ethel Adcox, 21 IBLA 258 (Aug. 11, 1975)

Although a patent issued pursuant to an Alaska State selection may have been issued by mistake, it vested title in the State and removed from the jurisdiction of this Department the right to inquire into and consider all disputed questions of fact as well as rights in the land.

Thomas Albert, 20 IBLA 338 (June 11, 1975)

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

A Native who has applied for an allotment within a national forest must show that he personally complied with the law in establishing occupancy and use prior to the effective date of the forest withdrawal and he may not tack on his parents' or grandparents' use and occupancy to establish a right in himself commencing prior to the creation of the forest.

No property rights were created under the Alaska Native Allotment Act until all requirements of statute and regulation were satisfied during the lifetime of the applicant.

The Government may withdraw lands occupied by Alaskan Natives under alleged aboriginal possessory rights and thus preclude such lands from disposition under the Native Allotment Act.

Louis P. Simpson et al., 20 IBLA 387 (June 16, 1975)

Even if a patent issued to a homestead entryman by mistake or inadvertence, it vested title in the patentee and removed from the jurisdiction of this Department the right to decide all disputed questions of fact as well as rights to land.

Basille Jackson, 21 IBLA 54 (June 18, 1975)

An allotment may issue where a qualified Native shows at least 5 years' continued use and occupancy of land from which he earns subsistence and where his use potentially excludes that of all others.

Jack Koutchak, 21 IBLA 71 (June 25, 1975)

An Alaska Native Allotment application covering lands which have been withdrawn from all forms of appropriation must be rejected unless the applicant can demonstrate that he actually used and occupied the land for a period of 5 years prior to withdrawal.

Henry B. Nashookpuk, Lennie Lane, Jr., Harriet J. Lane, 21 IBLA 116 (June 30, 1975)

The policy manifest in regulations pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows, in the exercise of the Secretary's discretion, consideration of a Native allotment applicant's use and occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of Mar. 4, 1927.

Carl E. Malutin et al., 21 IBLA 152 (July 16, 1975)

An application for a Native allotment consisting of two separate parcels of land is properly rejected as to the one parcel on which there is no evidence of use or occupancy by the applicant and the applicant fails to supply such evidence on request.

A request for an evidentiary hearing will be denied where there is no dispute involving a material fact and there is no chance of development of further material facts which would require a different decision.

Beulah Moses, 21 IBLA 157 (July 21, 1975)

Substantial use and occupancy, as contemplated by the Native Allotment Act, must be by the Native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents.

The Native Allotment Act, *as amended*, requires that an applicant must occupy the land he claims for at least 5 years, without distinction as to whether or not the land is part of the national forest system or is part of the unreserved public domain. Even if that requirement of the Act were interpreted to apply only to national forest land, occupancy for 5 years is still required on unreserved public domain by regulations promulgated pursuant to the authority and discretion of the Secretary of the Interior.

The requirement of 5 years' use and occupancy to receive an allotment under the Native Allotment Act must have occurred prior to Dec. 18, 1971, as the Alaska Native Claims Settlement Act extinguished all such unperfected claims from that day forward.

Warner Bergman, 21 IBLA 173 (July 25, 1975)

More than a quarter of a century of nonuse of land by an applicant for a Native allotment negates any assertion of substantially continuous use and occupancy and militates against a finding of substantial actual possession potentially exclusive of others, as required by law and regulation. Such a long period of nonuse by applicant vitiates any effective qualifying use and occupancy which may have preceded the long period of lack of use.

Lands in a powersite withdrawal are not available for Native allotment unless the applicant has completed 5 years of qualifying use and occupancy prior to the filing of the application for withdrawal for powersite purposes.

William Carlo, Sr., 21 IBLA 181 (July 25, 1975)

Where an applicant for a Native allotment asserts use and occupancy of the land in 1959 and the land is included in an application for powersite withdrawal of the lands in 1963, and is withdrawn in 1965 for such purposes, the applicant has failed to demonstrate the 5 years' use and occupancy prior to the effective date of the withdrawal as required by the Secretarial directive of Oct. 18, 1973. This is based upon the finding that an application for power purposes, upon its filing, immediately withdraws the land pursuant to sec. 24 of the Federal Power Act, *as amended*, 16 U.S.C. § 818 (1970).

Herman Joseph, 21 IBLA 199 (July 30, 1975)

An allotment may not be granted unless the applicant demonstrates she has made a substantially continuous use and occupancy for a period of 5 years as an independent citizen for herself or as the head of a household and not as a minor child occupying and using land in company with her parents, grandparents or other forebears.

An allotment right is personal to one who has fully complied with the law and regulations. An applicant must show that she herself has complied with the law and she may not tack on the period of use and occupancy by her parents, grandparents, or other forebears nor may general occupancy under alleged aboriginal rights serve as a basis upon which a Native may predicate a claim to an allotment.

Lula J. Young, 21 IBLA 207 (July 30, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Alaska Native allotment applications for lands in the Tongass National Forest are properly rejected where (1) the applications are not founded on use and occupancy of the applicants prior to inclusion of lands within the forest or (2) the Department of Agriculture does not certify that the lands are chiefly valuable for agricultural or grazing purposes.

Mary Y. Paul et al., 21 IBLA 223 (July 31, 1975)

The requirement of use and occupancy by an applicant under the Alaska Native Allotment Act contemplates possession at least potentially to the exclusion of all others and not mere intermittent use. Seasonal use for fishing, hunting and trapping within an area used for similar purposes by others without the consent of the applicant does not satisfy the requirements of the regulation that use shall be potentially to the exclusion of all others.

Where a Native allotment applicant has used the land applied for only for hunting, trapping and fishing and there are no improvements on the land, it is proper in the exercise of the Secretary's discretionary authority to reject the application to the extent it conflicts with a special land use permit issued to the Alaska Fish and Game Department for scientific purposes.

Gregory Anelon, Sr., 21 IBLA 230 (Aug. 1, 1975)

An Alaska Native allotment application is properly rejected where applicant fails to show 5 years' substantial continuous use and occupancy prior to the closing of the land to Native allotments. An allotment application is properly rejected when the land applied for is within a powersite withdrawal and initiation of use and occupancy was less than 5 years prior to the time the lands were closed.

Heirs of Charles E. Frank et al., 21 IBLA 248 (Aug. 11, 1975)

Leah Druck, 22 IBLA 253 (Oct. 22, 1975)

An allotment application must be rejected where the Native did not complete 5 years' substantial use and occupancy of the land prior to withdrawal. An applicant who was an infant of tender years at the time of withdrawal cannot qualify for an allotment on the withdrawn land.

Emma Moses, 21 IBLA 264 (Aug. 11, 1975)

An applicant under the Alaska Native Allotment Act does not have a due process "right" under the Constitution to a hearing before an administrative law judge on the rejection of her application in whole or in part.

The requirement of "substantially continuous use and occupancy of the land for a period of 5 years" applies to all applicants under the Alaska Native Allotment Act, regardless of where the land is situated. Such 5-year period must be completed prior to the time the land was withdrawn by the Alaska Native Claims Settlement Act.

Where a Native allotment applicant has had an adequate opportunity to submit her own evidence of use and occupancy, but has failed to do so, a decision rejecting the application in part because of inadequate use and occupancy may be upheld.

Heldina Eluska, 21 IBLA 292 (Aug. 11, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The date of the segregation from settlement, caused by the filing of a State selection application in the appropriate office of the Bureau of Land Managment, is not tantamount to the "effective date" of "[a] withdrawal or reservation" described in the Secretarial directive of Oct. 18, 1973. Therefore, Native use and occupancy commenced before such segregation may continue, unhampered by such segregation, to gain the requisite 5 years' use and occupancy required under 43 U.S.C. §§ 270-1 to 270-3 (1970).

Victor A. Anahonak, 21 IBLA 347 (Aug. 18, 1975)

Lands in the Arctic National Wildlife Range may not be made available for Native allotment unless the allotment applicant initiated substantial use and occupancy more than 5 years prior to the withdrawal of the land.

Herman S. Rexford, Wilson Soplu, 22 IBLA 20 (Sept. 5, 1975)

Lands in the Arctic National Wildlife Range may not be made available for Native allotment unless the allotment applicant initiated substantial use and occupancy more than 5 years prior to the withdrawal of the land.

Where an Alaska Native allotment applicant pending in the Department on Dec. 18, 1971, is later amended to include new or additional lands, the amendment to the application will not be considered as timely filed and will be rejected.

Annie Soplu, 22 IBLA 38 (Sept. 10, 1975)

An allotment may be granted only when the Native applicant demonstrates actual substantial use and occupation of the land at least potentially exclusive of others, and not merely intermittent use. Where such use is shown, all else being regular, an allotment ordinarily may issue for the smallest legal 40-acre subdivision embracing the area of use.

Hilma Eakon, 22 IBLA 41 (Sept. 15, 1975)

An application for an Alaska Native allotment filed with the Department of the Interior after Dec. 18, 1971, must be rejected.

Jessie Jim, Georgia Jim, 22 IBLA 54 (Sept. 17, 1975)

The requirement of "substantially continuous use and occupancy of the land for a period of five years" applies to all applicants under the Alaska Native Allotment Act, regardless of where the land is situated.

The requirement of use and occupancy for a period of 5 years in order to receive an allotment under the Alaska Native Allotment Act must be completed by Dec. 18, 1971. If an applicant for a Native allotment has not completed the 5 years prior to that date, he does not qualify under the Alaska Native Allotment Act.

John A. Faine, 22 IBLA 56 (Sept. 17, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Withdrawn lands are not open to appropriation under the Native Allotment Act. An Alaska Native allotment application is properly rejected where the applicant fails to show substantial use and occupancy at least potentially to the exclusion of others and not mere intermittent use.

Serafina Anelon, 22 IBLA 104 (Sept. 22, 1975)

Lands required for airport approach and aviation purposes, and lands most used in common by the general community, will be retained in public ownership and will not be conveyed pursuant to an application filed under the Alaska Native Allotment Act. Where the record fails to show that a Native has used land at least potentially to the exclusion of others for a 5-year period, his application for Native allotment is properly rejected.

Evan Chiskak, Alex Hunt, Angela Odinzoff, Antonia Raymond, 22 IBLA 153 (Sept. 30, 1975)

Lands withdrawn from appropriation under the nonmineral public land laws are not open to the initiation of Alaska Native Allotment claims. No rights may be initiated under the Alaska Native Allotment Act by occupation and use of lands not open to appropriation.

Substantial use and occupancy, as contemplated by the Alaska Native Allotment Act, must be by the Native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents.

An allotment right is personal to one who has fully complied with the law and regulations. A Native who applies for withdrawn lands must show that he did comply with the law prior to the effective date of withdrawal, and he may not tack on his deceased parents' use and occupancy to establish a right for himself prior to the withdrawal.

The Alaska Native Claims Settlement Act of Dec. 18, 1971, extinguished all aboriginal claims and rights of the Natives and terminated whatever aboriginal rights, if any, the Natives may have had.

James S. Picnalook, Sr., Mabel Bullard, 22 IBLA 191 (Oct. 15, 1975)

The Secretarial instruction of Oct. 18, 1973, which mandates a showing by a Native allotment applicant of 5 years of occupancy prior to a withdrawal of the land, was not required to be published as rulemaking since 5 U.S.C. § 553(a)(2) (1970) exempts from its ambit matters pertaining to public property.

Where a Native allotment application is not allowable because of failure to meet requirements of law and the applicant dies, her heirs gain no rights to the land.

Heirs of Dorothy Gordon, 22 IBLA 213 (Oct. 15, 1975)

A selection filed by the State of Alaska under its Statehood Act segregates the land from all appropriations based on settlement and location when the application is accepted by BLM and posted to the appropriate land status records. A Native allotment application is properly rejected where applicant fails to show occupation and use prior to the filing of an acceptable State selection application.

Martha Isaac, 22 IBLA 224 (Oct. 15, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The requirement of "substantially continuous use and occupancy of the land for a period of five years" applies to all applicants under the Alaska Native Allotment Act, regardless of where the land is situated.

A Native allotment applicant is not entitled to credit for her use and occupancy of the land as a minor child accompanying her parents. Moreover, failure to use the land for at least 8 years prior to applying for a Native allotment precludes an applicant from showing "substantially continuous use and occupancy of the land."

Applicants under the Alaska Native Allotment Act do not have a right to a formal hearing before an administrative law judge. However, a hearing may be ordered in the discretion of the Secretary of the Interior.

Elsie Bergman, Walter Titus, Steven Bergman, 22 IBLA 233 (Oct. 22, 1975)

The Alaska Native Allotment Act, as amended and supplemented, requires that an applicant must use and occupy the land claimed for at least 5 years, whether or not the land is part of the national forest system or is part of the unreserved public domain. Even if the Act were to be construed as not expressly requiring 5-year use and occupancy prior to issuance of an allotment for unreserved public domain lands, Departmental regulations promulgated pursuant to the authority and discretion of the Secretary of the Interior impose such a requirement.

The preference right created under the Alaska Native Allotment Act is not a property right protected by the Fifth or Fourteenth Amendments to the United States Constitution, and consequently, a Native allotment applicant has no constitutional right to a hearing. While the applicant is not entitled to a hearing as a matter of right, one may be held at the discretion of the Secretary of the Interior, but when the applicant fails to allege any facts which would justify a hearing and the sole issues presented are legal in nature, an evidentiary hearing is not required.

Substantial use and occupancy, as contemplated by the Alaska Native Allotment Act, must be by the Native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents.

Paul Koyukuk, 22 IBLA 247 (Oct. 22, 1975)

The Secretarial guideline of Oct. 18, 1973, that a Native allotment applicant should be rejected when the applicant fails to show 5 years of use and occupancy prior to a withdrawal of the land: (a) is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970); and (b) is a proper exercise of the discretion vested in the Secretary by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), the application of which does not violate any right of the allotment applicant.

Herman Joseph (On Reconsideration), 22 IBLA 266 (Oct. 30, 1975)

Once made, an election to apply under sec. 14(h)(5) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(5) (Supp. III 1973), in lieu of a Native allotment application, is irrevocable.

Dwight Ievuk (Deceased), 22 IBLA 296 (Nov. 3, 1975)

Mere seasonal use of land for berry picking, when the land is used for berry picking by others, is not the substantially continuous use and occupancy to the potential exclusion of others contemplated by the regulations. A Native allotment application which asserts seasonal use for berry picking while the land is used by others must be rejected.

Myrtle Jaycox, 22 IBLA 324 (Nov. 10, 1975)

Where, prior to the rejection of her application, an applicant for a Native allotment was advised of findings which, unless rebutted, would result in the rejection of the application, and was afforded an extended period of time in which to submit additional evidence, evidence which is thereafter submitted for the first time on appeal from the rejection decision, without explanation of why it was not submitted when due, will not be favorably considered in adjudicating the propriety of the decision appealed from.

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Mary Ayojiak, 22 IBLA 384 (Nov. 21, 1975)

A Native allotment application is properly rejected where applicant fails to show occupation and use prior to the filing of a State selection application.

Substantial use and occupancy, as contemplated by the Alaska Native Allotment Act, must be by the Native as an independent citizen for herself or as head of a family, and not as a minor child occupying or using the land in company with her parents.

Louise Luke, 22 IBLA 388 (Nov. 24, 1975)

The requirement of use and occupancy by an applicant under the Alaska Native Allotment Act contemplates possession at least potentially to the exclusion of all others and not mere intermittent use. The burden to present clear and credible evidence to establish entitlement is upon the applicant.

The requirement of "substantially continuous use and occupancy of the land for a period of 5 years" applies to all allotments under the Alaska Native Allotment Act, regardless of where the land is situated.

An applicant under the Alaska Native Allotment Act does not have a due process right under the Constitution to a hearing before an administrative law judge on the rejection of his application.

Jack Gosuk, 22 IBLA 392 (Nov. 24, 1975)

Lands withdrawn from appropriation under the public land laws and lands within Alaska State selection applications are not open to the initiation of Alaska Native allotment claims.

An applicant for a Native allotment cannot tack on the use and occupancy of the land by his relatives to his own use and occupancy in order to establish the statutory 5-year period of substantially continuous use and occupancy.

Cecil R. Sholl, 23 IBLA 17 (Nov. 26, 1975)

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

A Native who has applied for an allotment within a national forest must show that he personally complied with the law in establishing occupancy and use prior to the effective date of the forest withdrawal and he may not tack on his parents' or grandparents' use and occupancy to establish a right in himself commencing prior to the creation of the forest.

Under the Alaska Native Allotment Act, a Native must be old enough to exert independent use and control of the land at the time he initiates his claim, and must occupy the land to the potential exclusion of others.

Christine Laverne Hanlon et al., 23 IBLA 36 (Dec. 2, 1975)

Substantial use and occupancy, as contemplated by the Native Allotment Act, must be by the Native independently for himself or as head of a family prior to the effective date of withdrawal, and he may not tack on use and occupancy by his parents or ancestors to establish a right for himself prior to the withdrawal.

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 while the grazing lease was still extant, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Herman Haakanson, 23 IBLA 54 (Dec. 4, 1975)

A selection application, filed by the State of Alaska under its Statehood Act, segregates the land from all appropriations, including those based on settlement and location, when the application is filed. A Native allotment application is properly rejected where it fails to show use and occupancy initiated prior to the filing of the State selection application.

William F. Tennyson, Jr., 23 IBLA 77 (Dec. 12, 1975)

The use and occupancy requirement is satisfied when a qualified Native shows at least 5 years of continued use and occupancy of land from which she earns subsistence and where her use potentially excludes that of all others.

Bernice A. Brown, 23 IBLA 79 (Dec. 12, 1975)

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from a rejection of a Native allotment application in the absence of a satisfactory showing why the evidence was not submitted to Bureau of Land Management within the period afforded the applicant for the submission of such evidence.

An applicant for a Native allotment has no right to a hearing, and none is required where there is no offer of proof which indicates that the findings of the State Office were incorrect, or where an offer of evidence is unaccompanied by a satisfactory explanation why it was not submitted to the State Office within the time provided.

A request by a Native allotment applicant for a new field examination will be denied where the applicant was given the opportunity to submit evidence in support of her claim and failed to do so.

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

Where a field examination reveals substantial use and occupancy by persons other than the claimant, a decision rejecting a Native allotment application will be affirmed.

Nora E. Kongkpeok, 23 IBLA 86 (Dec. 16, 1975)

An Alaska Native allotment application is properly rejected where the applicant fails to demonstrate completion of 5 years of substantially continuous use and occupancy prior to an application for withdrawal of the land for power purposes.

Wayne C. Williams, 23 IBLA 88 (Dec. 16, 1975)

The right to an allotment is personal to a Native who has complied with the law and regulations. An applicant who applies for withdrawn lands must show personal compliance with the law prior to the effect of the withdrawal. Such applicant may not tack on the use and occupancy of parents or other relatives to establish her right prior to the withdrawal.

An allotment application must be rejected where the applicant was an infant of tender years at the time the subject land was withdrawn, and where it is obvious that because of her age she could not have exerted independent use and occupancy of the land to the exclusion of others.

Catherine Angaiak, 23 IBLA 91 (Dec. 18, 1975)

Where a Native allotment applicant alleges that he has used the applied for land for hunting and trapping and submits several affidavits for the first time on appeal which verify this use, and the applicant makes a satisfactory showing explaining why he was unable to submit this evidence to the Bureau of Land Management prior to its decision, the case will be remanded to the Bureau for further consideration of the application in light of the new evidence.

Jack Egnaty, Sr., 23 IBLA 95 (Dec. 18, 1975)

Where a Native allotment applicant has had an adequate opportunity to submit credible evidence of substantially continuous use and occupancy of the land at least potentially exclusive of others, but has failed to make such a showing, the application is properly rejected.

Over 20 years of nonuse of land by an applicant for a Native allotment negates any assertion of substantially

continuous use and occupancy and militates against a finding of substantial actual possession potentially exclusive of others, as required by law and regulations. The period of nonuse vitiates any effective qualifying use and occupancy which may have preceded the long period of lack of use.

Natalia Peruk, 23 IBLA 99 (Dec. 18, 1975)

Lucy Brezikck, 23 IBLA 145 (Dec. 23, 1975)

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest, or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

A Native who has applied for an allotment within a national forest must show that he personally complied with the law in establishing occupancy and use prior to the effective date of the forest withdrawal and he may not tack on his parents' or grandparents' use and occupancy to establish a right in himself commencing prior to the creation of the forest.

Estate of Benjamin A. Wright, 23 IBLA 120 (Dec. 23, 1975)

Nadja Davis Gamble, 23 IBLA 128 (Dec. 23, 1975)

A decision rejecting a Native allotment application which alleges occupancy only as of a date after a State selection application for the land has been filed will be upheld and a request for a hearing on appeal denied where appellant has refused after repeated opportunities to provide factual allegations of qualifying occupancy and the statement of reasons on appeal fails to assert any facts which would tend to establish qualifying occupancy.

A Native allotment applicant is charged with notice of the official land records of the Bureau of Land Management. No estoppel will result from a delay in the rejection of a Native allotment where the basis of the decision is that the land was segregated by a State selection application prior to commencement of occupancy, the delay was not unreasonable, the State selection was a matter of public record, and no misrepresentations were made to the applicant.

Roselyn Isaac, 23 IBLA 124 (Dec. 23, 1975)

The burden is upon an applicant for an Alaska Native allotment to provide clear and credible evidence of his or her entitlement to an allotment. Failure to do so will result in rejection of the application.

When an applicant for an Alaska Native allotment dies without having complied with the law and regulations necessary to earn an allotment, no property right is created which could have passed to the heirs of the applicant upon her death.

Heirs of Madrona Wassillie, 23 IBLA 131 (Dec. 23, 1975)

Under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq.* (1970), issuance of a grazing lease appropriates the lands and segregates them from public domain, barring

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from lease.

Edward F. Naughton, 23 IBLA 134 (Dec. 23, 1975)

An allotment may be granted only when the Native applicant demonstrates actual substantial use and occupancy of the land at least potentially exclusive of others and not merely intermittent use.

Where a Native allotment applicant has had an adequate opportunity to clearly identify his area of allotment and to present clear and credible evidence to establish his entitlement but has failed to do so, a decision rejecting the application will be affirmed.

Lavilla Pauk, 23 IBLA 151 (Dec. 23, 1975)

A Native allotment may not be approved where the land applied for has been within a powersite withdrawal long prior to the initiation of applicant's use and occupancy.

Davis Hobson, 23 IBLA 159 (Dec. 23, 1975)

There must be "substantially continuous use and occupancy of the land" by an Alaska Native allotment applicant to qualify such an applicant for an allotment.

Heirs of Macauley Alakayak, 23 IBLA 170 (Dec. 29, 1975)

The substantial use and occupancy required under the Native Allotment Act must be achieved by the Native himself as an independent citizen (or family head) and such use must be at least potentially exclusive of others. Although a minor may initiate such use and occupancy, use and occupancy by a dependent accompanied by his parents does not qualify.

An allotment right is personal to one who has fully complied with the law and the regulations. An applicant for a Native allotment may not tack on use and occupancy of the land by his ancestors to establish the right. The applicant must have completed the 5-year period of use and occupancy prior to withdrawal of the land to qualify.

Where the decision appealed from is based essentially on the facts disclosed by appellant, there is no dispute as to any material fact, and the sole question presented is a legal issue, no evidentiary hearing is required on appeal.

Sarah P. Lindgren, Emery V. Showalter, 23 IBLA 174 (Dec. 31, 1975)

The requirement of use and occupancy by an applicant under the Alaska Native Allotment Act contemplates possession at least potentially to the exclusion of all others and not mere intermittent use. The burden to present clear and credible evidence to establish entitlement is upon the applicant.

An applicant under the Alaska Native Allotment Act does not have a due process "right" under the Constitution to a hearing before an administrative law judge on the rejection of her application in whole or in part.

Anuska Tugatuk, 23 IBLA 182 (Jan. 5, 1976)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where an applicant for an allotment pursuant to the Alaska Native Allotment Act did not occupy the land prior to its inclusion in a national forest, and the land is found not to be chiefly valuable for agricultural or grazing purposes by the authorized officer, the application will be rejected.

Albert Shields, Sr., 23 IBLA 188 (Jan. 5, 1976)

In order to qualify for an allotment an Alaska Native applicant must show substantially continuous use and occupancy of the land for a period of 5 years. When there is no evidence that the applicant used and occupied the land as required, the application must be rejected.

Angeline Gooden, 23 IBLA 192 (Jan. 6, 1976)

An Alaska Native allotment applicant may not use the occupancy of public land by forebears to qualify herself for an allotment, nor does the use and occupancy of public land by a forebear, while the land was open to settlement, create any right that excepts the land from a withdrawal in favor of an applicant who initiated independent use and occupancy subsequent to the withdrawal.

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq.* (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 *et seq.* (1970), until the lease is canceled of record.

Native use and occupancy of land within an Alaska grazing lease does not preclude the State from selecting the land as "vacant and unappropriated" land within the meaning of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes prec. § 21 (1970). The initiation of use and occupancy subsequent to the segregation of the land in favor of the State gives an applicant no rights to an allotment.

Sandra H. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

Where evidence shows use and occupancy of only a part of the land claimed in a Native allotment application, an allotment may be approved for the smallest legal 40-acre subdivision embracing the area of use, and the application as to the remainder of the land is properly rejected.

Emily D. Hunt, 23 IBLA 205 (Jan. 6, 1976)

An allotment may be granted only when the Native applicant demonstrates actual substantial use and occupation of the land at least potentially exclusive of others, and not merely intermittent use.

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary with the Secretary of the Interior. However, where there does appear to be a dispute as to material facts raised by conflicting affidavits as to the alleged use of land by conflicting applicants, a further field investigation will be directed in an attempt to resolve the factual uncertainties.

Amelia K. Elastervold et al., 23 IBLA 207 (Jan. 6, 1976)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where the record of a Native allotment application at the time of adjudication shows that rejection would be proper, appellant will not be allowed on appeal to submit data which might warrant a different result, absent a clear and convincing showing explaining why the information was not afforded to the Bureau of Land Management when appellant was called upon for such data.

David E. Stevens, 23 IBLA 221 (Jan. 8, 1976)

Where the evidence shows that an applicant for a Native allotment has never occupied the land, the application will be rejected.

Elia Wassillie, 23 IBLA 276 (Jan. 12, 1976)

Where a Native allotment application is properly rejected and on appeal the applicant first submits assertions which, if proved, might qualify her, but fails to make a showing explaining why the data was not timely filed, the rejection of the application will stand.

Marion Stevens, 23 IBLA 280 (Jan. 12, 1976)

Where a Native allotment applicant has had an adequate opportunity to submit credible evidence of substantially continuous use and occupancy of the land at least potentially exclusive of others, but has failed to make such a showing, the application is properly rejected.

A request by a Native allotment applicant for a new field examination will be denied where the applicant was given the opportunity to submit evidence in support of her claim and failed to do so.

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary with the Secretary of the Interior. A hearing is not appropriate when there is no offer of proof which if established would impel a different legal conclusion.

Kathryn Eluska, 23 IBLA 284 (Jan. 12, 1976)

A Native allotment application for lands within a wildlife range withdrawal is properly rejected where the applicant did not initiate and complete substantial use and occupancy for a 5-year period prior to the effective date of withdrawal or segregation.

The requirement of "substantially continuous use and occupancy of the land for a period of 5 years" applies to all applicants under the Alaska Native Allotment Act, regardless of where the land is situated.

Medina Flynn, 23 IBLA 288 (Jan. 12, 1976)

A selection filed by the State of Alaska segregates the land from all appropriations when the State files its application to select. A Native allotment application is properly rejected where applicant fails to show substantial use and occupancy of the land prior to the filing of a State selection application independently for himself or as the head of a family, and not as a minor child occupying or using the land in company with his parents or ancestors.

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The burden to present clear and credible evidence to establish entitlement to a Native allotment is upon the applicant.

Daniel Johansen, 23 IBLA 292 (Jan. 12, 1976)

The requirement of use and occupancy by an applicant under the Alaska Native Allotment Act contemplates possession at least potentially to the exclusion of all others and not mere intermittent use. The burden to present clear and credible evidence to establish entitlement is upon the applicant.

An applicant for a Native allotment does not have a right to a formal hearing before an administrative law judge. Hearings may be held in the discretion of the Secretary of the Interior and will not be held where it is unlikely that further evidence will result in a different conclusion.

John C. Knutsen, 23 IBLA 296 (Jan. 12, 1976)

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from rejection of a Native allotment satisfactory to it why the evidence was not submitted to the Bureau of Land Management within the 60-day period afforded the applicant to submit a further evidence in support of his application. General, rather than specific, allegations of difficulties in travel and communicating in Alaska are not satisfactory showings of the reason for late filing of such evidence.

A field examination of a land claimed for a Native allotment is not sufficiently thorough where the field examiner reveals in his report that only a portion of the parcel was actually examined for evidence of use and occupancy.

Linda L. Walker, 23 IBLA 299 (Jan. 14, 1976)

An allotment right is personal to one who has fully complied with the law and regulations. Substantially continuous use and occupancy by the Native himself, as an independent citizen or head of a family, is required, and such use must be at least potentially exclusive of others. A minor may initiate such use and occupancy, but use and occupancy by a dependent accompanied by his parents does not qualify. An applicant may not tack on use and occupancy of the land by his ancestors.

To be entitled to an Alaska Native allotment there must be 5 years of substantially continuous use and occupancy, whether or not the land is part of the national forest system or part of the unreserved public domain.

Secretarial Guideline of Oct. 18, 1973, established that an applicant for an Alaska Native allotment must have completed a 5-year period of substantially continuous use and occupancy prior to withdrawal of the land. This guideline is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970).

A request for an evidentiary hearing will be denied where there is no dispute involving a material fact, and there is no chance of development of further material facts which would require a different decision.

Stanley E. McCormick, 23 IBLA 304 (Jan. 16, 1976)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Land patented to the State of Alaska pursuant to the Act of Jan. 21, 1929, 45 Stat. 1091, is no longer in Federal ownership and is not available for an Alaska Native allotment.

A BLM State Office decision rejecting an Alaska Native allotment application will be affirmed when the applicant has failed to submit satisfactory proof of substantially continuous use and occupancy of any land.

Mary A. A. Aspinwall, 23 IBLA 309 (Jan. 16, 1976)

An allotment right is personal to one who has fully complied with the law and the regulations. An applicant for a Native allotment on land withdrawn from appropriation and reserved for lighthouse purposes by Executive Order, subject to valid existing rights, must have completed the 5-year period of substantially continuous use and occupancy prior to the withdrawal in order to be eligible for an allotment.

The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen for himself (or as head of a family) and not as a minor, dependent child occupying or using the land in the company of his parents.

An evidentiary hearing is not required where a decision is based upon the facts as stated by the applicant, there is no dispute as to any material fact, and the sole question presented is a legal issue.

Rachael Topsekok, 23 IBLA 314 (Jan. 16, 1976)

Under the Alaska Native Allotment Act, no rights are acquired by an applicant who asserted commencement of settlement on land when it was included in a grazing lease issued under the Alaska Grazing Act of 1927, because the land was segregated from adverse appropriation.

Christine Von Scheele, 23 IBLA 346 (Jan. 21, 1976)

Where the Bureau of Land Management determines that an Alaska Native allotment application should be rejected because the land was not used and occupied by the applicant, the BLM shall issue a contest complaint pursuant to 43 CFR 4.451 et seq. Upon receiving a timely answer to the complaint, which answer raises a disputed issue of material fact, the Bureau will forward the case file to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, for assignment of an administrative law judge, who will proceed to schedule a hearing at which the applicant may produce evidence to establish entitlement to his allotment.

Donald Peters, 26 IBLA 235 (Aug. 17, 1976) 83 I.D. 308

Where an Alaskan Native alleges that the land described in her Native Allotment Certificate is not the land she settled on and posted, her application for an amendment of the certificate will not be rejected solely because the certificate description is consistent with her application if she offers a reasonable explanation for the mistake and has actually occupied the land she seeks to have included in her certificate.

Edith Jacquot, 27 IBLA 231 (Oct. 12, 1976)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where an application for an allotment by an Alaskan Native includes land in a State of Alaska selection application that has been tentatively approved to the State, and where the Native alleges occupancy and use from a date prior to the filing of the State selection, the allotment application may be granted, if the facts alleged are ultimately proved and the application is regular in all other respects.

Where the State of Alaska has applied to select certain land and has been given tentative approval of that selection, and thereafter a conflicting Native allotment application is filed which is supported only by meager evidence of use and occupancy, it is error to allow the the allotment application and to cancel the State's tentative approval and reject the selection application without notice and an opportunity for a hearing in which the State may participate.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

Where a petition for reconsideration of a previous Board decision applying departmental contest procedures to Alaska Native allotment applications fails to show that the original decision was erroneous in any matter, the original decision will be sustained.

Donald Peters (On Reconsideration), 28 IBLA 153 (Nov. 23, 1976) 83 I.D. 564

The filing of an option form by an Alaska Native to receive his "primary place of residence" pursuant to sec. 14(h)(5) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(5) (Supp. III, 1973), does not terminate a prior allotment application filed under the Native Allotment Act, 43 U.S.C. § 270-1 (1970). Allowance of an application under either act renders the applicant ineligible for allowance of the other application.

Dwight Tevuk (Deceased) (On Reconsideration), 29 IBLA 160 (Mar. 9, 1977)

An allotment application must be rejected where the Native has not completed a 5-year period of substantial use and occupancy prior to the withdrawal of the land. The substantial use and occupancy required must be achieved by the Native as an independent citizen for himself (or as head of a family), at least potentially exclusive of others, and not as a minor, dependent child occupying or using the land in the company of his parents or ancestors.

An allotment right is personal to one who has fully complied with the law and the regulations and an applicant for a Native allotment may not tack on ancestral use and occupancy of the land to establish the right.

A request for a hearing on a Native allotment application will be denied where an evidentiary hearing is not necessary because there are no facts in dispute and the sole question is a legal issue.

Mable Melovedoff, 29 IBLA 250 (Mar. 25, 1977)

An Alaska Native allotment applicant may not use the occupancy of public land by forebears to qualify herself for an allotment, nor does the use and occupancy of public land by a forebear, while the land was open to settlement, create any right that excepts the land

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

from a withdrawal in favor of an applicant who initiated independent use and occupancy subsequent to the withdrawal.

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq.* (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 *et seq.* (1970), until the lease is canceled of record *pro tanto*.

Myrtle M. Jensen Shanigan, 29 IBLA 255 (Mar. 25, 1977)

Where an Alaska Native has timely filed an allotment application pursuant to the Act of May 17, 1906 (34 Stat. 197, *as amended*), asserting that his use and occupancy of the land was initiated prior to the withdrawal imposed on Jan. 17, 1969, by PLO 4582, neither the imposition of that withdrawal nor the subsequent repeal of the 1906 Act will interdict his continuing lawful occupancy or preclude him from thereafter completing the required 5 years of substantially continuous use and occupancy.

Warner Bergman (On Reconsideration), 31 IBLA 21 (June 20, 1977)

Issuance of a certificate of allotment vests full title to the parcel concerned in the allottee, notwithstanding the fact that the Department retains the right to approve a subsequent sale of the parcel by the allottee.

State of Alaska, 35 IBLA 140 (May 22, 1978)

Where the State of Alaska has shown an interest in land in its existing airport, it may bring a private contest to challenge Native allotment applications for land in conflict with the airport.

State of Alaska, 40 IBLA 79 (Mar. 22, 1979)

The State of Alaska will be afforded time within which to bring private contests against Native allotment applications conflicting with an existing airport runway built by the State and to show it has standing to contest. If it does so timely, the Bureau of Land Management will adjudicate its standing as a contestant and the contests will proceed if it finds affirmatively. If not, the State's timely objections will be taken as a protest and a factfinding hearing will be held. If the State fails to take timely action, a decision rejecting its application to reinstate a conflicting airport lease application will stand.

State of Alaska, 40 IBLA 118 (Mar. 27, 1979)

Alaska Natives who allege substantial use and occupancy of vacant, unappropriated, and unreserved public land in Alaska for a period of at least 5 years pursuant to the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 to 270-3 (1970), and the regulations at 43 CFR Subpart 2561 are entitled to notice and an opportunity for a hearing prior to rejection of their application. Such notice shall specify the reasons for the proposed rejection. Claimant shall have an opportunity to present evidence and testimony of favorable witnesses at a hearing before the trier of fact prior to a decision.

Where the Bureau of Land Management determines that an Alaska Native allotment application should be rejected because the land was not used and occupied by the applicant, the BLM shall issue a contest complaint pursuant to 43 CFR 4.451 *et seq.* Upon receiving a timely answer to the complaint, which answer raises a disputed issue of material fact, the Bureau will forward the case file to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, for assignment of an administrative law judge, who will proceed to schedule a hearing, at which the applicant may produce evidence to establish entitlement to his allotment.

John Moore et al., 40 IBLA 321 (Apr. 30, 1979)
86 I.D. 279

When an Alaska Native allotment applicant alleges that there has been substantial use and occupancy of vacant, unappropriated, and unreserved public land in Alaska for a period of at least 5 years pursuant to 43 U.S.C. §§ 270-1 to 270-3 (1970) and 43 CFR Subpart 2561, and the Bureau of Land Management determines the application should be rejected because the land was not so used and occupied, the Native is entitled under contest procedures, 43 CFR 4.451, to notice and an opportunity for a hearing prior to rejection of his application.

Mary Bobby, 41 IBLA 44 (May 29, 1979)

Rika Murphy, Gene H. Smagge, 42 IBLA 51 (July 31, 1979)

The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen for himself (or as head of a family) and not as a minor, dependent child occupying or using the land in the company of his parents. This does not mean that a minor may not establish qualifying use or occupancy--the issue is the nature of the use and occupancy. It must be achieved by an independent citizen in his own right and it must be at least potentially exclusive of others.

Where an applicant for an Alaska Native allotment was a minor at the time she alleges the initial use and occupancy of the land, but not so young as to preclude any possibility that she was then capable of doing so as an independent citizen in her own right to the potential exclusion of others, prior to rejection of her application on the basis of her youth BLM should provide notice and an opportunity for hearing.

Nellie Boswell Beecroft, 41 IBLA 70 (May 31, 1979)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before the trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 *et seq.*

Frederick Phillips et al., 41 IBLA 169 (June 22, 1979)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The Department has determined that an official of the Bureau of Indian Affairs is not entitled to represent a Native allotment applicant in an appeal to the Board of Land Appeals. However, where the case involves the propriety of proofs submitted by the Bureau of Indian Affairs in behalf of a deceased Native allotment applicant, that issue may be resolved.

Where a Native allotment application is filed before the death of an applicant, proof of the applicant's use and occupancy, if otherwise timely, may be filed by the appropriate official of the Bureau of Indian Affairs pursuant to 43 CFR 2561.2(a) after the applicant's death. A decision rejecting the application because the proof was filed after the applicant's death must be set aside where the proof is not inconsistent with the application. Further proceedings must be served upon the heirs, known or unknown, by appropriate service, and also upon conflicting claimants, such as the State of Alaska.

Ernest L. Olson, Jr. (Deceased), 41 IBLA 179 (June 22, 1979)

Where the Bureau of Land Management (BLM) determines that an Alaska Native allotment application should be rejected in part because the Native did not use all of the land applied for, the BLM shall initiate a contest proceeding pursuant to 43 CFR 4.451 et seq.

Federal title to land may be lost by erosion, and land which has become submerged under water is no longer subject to disposition under the Alaska Native Allotment Act. The fact that an Alaska Native may have used, occupied, and filed an application for such land when it was dry does not prevent the loss of Federal title to that land by erosion. Neither the Alaska Statehood Act nor the Submerged Lands Act prevents the passage of title to such land to the State.

Frank Hulland, 41 IBLA 207 (June 27, 1979) 86 I.D. 342

Native occupancy and use commenced at a time when land is withdrawn from settlement, location, sale, or entry provides no basis for a Native allotment. Withdrawal of the land in 1940 by Exec. Order No. 8344, inclusion of the land in a grazing lease and homesite, and the subsequent selection of the land by the State of Alaska in 1966 have effectively kept the land closed to the initiation of rights under the Act of May 17, 1906, at all times during the period from 1940 to Dec. 18, 1971, when the Act was repealed by the Alaska Native Claims Settlement Act.

Although the Department has adhered to the principle of protecting Indian occupancy on public lands, it also has the responsibility of protecting rights of others to public land tenure, including persons who have been granted grazing leases under the Alaska Grazing Act of Mar. 4, 1927, as amended, 43 U.S.C. §§ 316, 316a-316o (1976).

Milton H. Pagano, 41 IBLA 214 (June 27, 1979)

Native use and occupancy commenced at a time when land is otherwise appropriated and segregated from such use and occupancy provides no basis for a claim under the Act of May 17, 1906. Inclusion of the subject lands in 1932 in a grazing lease, withdrawal of the lands in 1940, selection of the lands in 1967 by the State of Alaska, and subsequent withdrawals in 1973 pursuant to the Alaska Native Claims Settlement Act have effectively kept the lands closed to the initiation of rights

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

under the Act of May 17, 1906, at all times during the period from 1932 to Dec. 18, 1971, when the Act was repealed by sec. 18 of the Alaska Native Claims Settlement Act.

Although the Department has adhered to the principle of protecting Indian occupancy on public lands, it also has the responsibility of protecting rights of others to public land tenure, including persons who have been granted grazing leases under the Alaska Grazing Act of Mar. 4, 1927, as amended, 43 U.S.C. §§ 316, 316a-316o (1976).

Magnel E. Drabek, 41 IBLA 219 (June 27, 1979)

The Alaska Native Allotment Act authorizes a nonalienable, nontransferable, and noninheritable right of selection which terminates upon death. Only when an allotment selection has been made by the filing of an acceptable application for public land open to such application and the applicant had used and occupied the land for not less than 5 years in his lifetime is the preference right to an allotment earned and an inheritable right established. A Native who applies for withdrawn lands must show that he himself complied with the law prior to the date of withdrawal. No Native may avail himself of any period of use and occupancy by his ancestors to establish a right to an allotment. Where a Native was born after lands were withdrawn, the application must be rejected.

Arthur R. Martin et al., 41 IBLA 224 (June 27, 1979)

A Native allotment applicant, who was 5 years old at the time when the land was withdrawn from all forms of appropriation, is properly deemed to be incapable as a matter of law of having exerted independent use and occupancy of the land to the exclusion of others prior to the withdrawal and consequently the allotment application is properly rejected.

An allotment right is personal to one who has complied with the laws and regulations. An applicant for a Native allotment may not rely or tack on use and occupancy of the land by his ancestors to establish his right.

Floyd L. Anderson, Sr., 41 IBLA 280 (June 28, 1979)
86 I.D. 345

A grazing lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), appropriates the lands and segregates them from the public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from the lease.

The substantial use and occupancy as required by the Native Allotment Act must be by the Native independently for himself or as head of a family prior to the effective date of withdrawal, and he may not tack on use and occupancy by his parents or ancestors to establish a right for himself prior to the withdrawal.

Herman Anderson, Jr., Nicholas Pestrikoff, Anthony Drabek, 41 IBLA 296 (June 29, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska, 41 IBLA 309 (July 5, 1979)

The Alaska Native Claims Settlement Act extinguished aboriginal occupancy claims of Alaska Natives; such claims cannot serve as a bar to a State selection, nor preclude the State from challenging Native allotment applications conflicting with its selection.

Under the "functional" standard to determine administrative standing set forth in Koniag, Inc. v. Andrus, 580 F.2d 601 (D.C. Cir. 1978), cert. denied, 99 S. Ct. 733 (1979), the State of Alaska has standing to challenge Native allotment applications conflicting with its selection applications even if the land is within a Native village selection area under the Alaska Native Claims Settlement Act. The State has standing under Departmental regulations to initiate private contests against such conflicting Native allotment applications.

State of Alaska selection applications should not be rejected because of conflicts with Native allotment applications which are to be approved without first affording the State notice of such action to be taken and an opportunity to contest the conflicting claims if it desires.

State of Alaska et al., 41 IBLA 315 (July 11, 1979)
86 I.D. 361

The substantial use and occupancy as required by the Native Allotment Act must be by the Native himself prior to the effective date of withdrawal, and he may not tack on use and occupancy by his parents or ancestors to establish a right for himself prior to the withdrawal.

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Norman Opheim, Billy Boskofsky, Jr. (As Heir of Nicholas Boskofsky), 41 IBLA 338 (July 11, 1979)

Where an applicant for a Native allotment alleges use and occupancy of lands which had previously been withdrawn in accordance with sec. 24, Federal Water Power Act of June 10, 1920, an application is properly denied despite the fact that a public land order designating the area a powersite classification is issued subsequent to the applicant's commencement of use and occupancy. Lands included in an application for powersite development under the Act shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the United States, unless otherwise directed by the Federal Power Commission or by Congress.

A request for a hearing on a Native allotment application will be denied where there are no facts in dispute and the sole question is a legal issue.

Lindberg Alexander, 41 IBLA 382 (July 23, 1979)

The State of Alaska has a sufficient interest in land by virtue of its applications for an airport conveyance or by its selection application to have standing to initiate private contests against conflicting Native allotment applications.

State of Alaska applications for prior-filed airport conveyances of land needed for an existing airport should not be rejected because of conflicts with Native allotment applications which are to be approved without first affording the State notice of such action to be taken and an opportunity to contest the conflicting claims if it desires.

State of Alaska, 42 IBLA 1 (July 25, 1979)

The substantial use and occupancy required under the Native Allotment Act must be achieved by the Native himself as an independent citizen (or family head) and such use must be at least potentially exclusive of others. Although a minor may initiate such use and occupancy, use and occupancy by a dependent accompanied by his parents does not qualify.

Where a Native allotment application has been rejected, based on the guidelines of Oct. 18, 1973, on the basis that the applicant had not demonstrated 5 years use and occupancy of the land prior to the withdrawal affecting the land, and that requirement is abolished by Secretarial Order No. 3040, of May 25, 1979, the decision will be set aside and the case remanded for action.

Bella Nova, 42 IBLA 59 (Aug. 2, 1979)

Withdrawn lands are not open to appropriation under the Native Allotment Act. Appellant's settlement upon a tract of land withdrawn from entry is a trespass, and such settlement does not provide a basis for any claim to the land.

Publication in the Federal Register of PLO No. 3422 withdrawing certain lands in Alaska from all forms of appropriation under the public land laws, except leasing under the mineral leasing laws, gives valid notice of its contents.

Elizabeth J. Martini, 42 IBLA 82 (Aug. 13, 1979)

Where BLM fails to show that there was service of a decision rejecting an Alaska Native allotment and the applicant learns of his rejection 4-1/2 years after rejection, the applicant may file a timely appeal within 30 days of notice of the decision.

Mailing to the Bureau of Indian Affairs a carbon copy of a decision rejecting an application for an Alaska Native allotment is not service upon the applicant so as to comply with 43 CFR 4.401.

Gust J. Seft, Sr., 42 IBLA 86 (Aug. 13, 1979)

The relaxed procedural rules relating to the filing of statements of reasons for appeal in Native allotment cases enunciated in the letter of Sept. 24, 1975, and extended in the order of Nov. 26, 1976, IBLA 76-715, are hereby revoked. All future requests for extensions of time must comport with the regulations found at 43 CFR 4.22(f)(2).

Where, in a decision holding a Native allotment for approval and a State selection for rejection to the extent of a conflict, the Bureau of Land Management grants the State 30 days to initiate a private contest challenging the Native allotment, the 30-day appeal period will commence upon expiration of the 30 days accorded the State for initiation of a private contest and not with receipt of the decision.

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest, or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska et al., 42 IBLA 94 (Aug. 16, 1979)

An allotment right is personal to one who has fully complied with the law and regulations and an applicant for a Native allotment may not tack on ancestral use and occupancy of the land to establish his right thereto. Ancestral use of the land while open to settlement does not create any right that excepts the land from a withdrawal in favor of an applicant who may have initiated use and occupancy subsequent to the withdrawal.

Sam Hanlon, Sr., 42 IBLA 161 (Aug. 17, 1979)

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted.

The nonuse of land within a Native allotment application for a period of time is relevant to the issues of abandonment of the claim, and whether there have been substantially continuous use and occupancy as required by the law. Such nonuse or highly limited and intermittent use also affords a basis for rejecting an application in the exercise of the Secretary's discretion where such nonuse or highly limited and intermittent use demonstrates the land is not needed by the Native and that the purpose of the Native Allotment Act to secure land

actually used and occupied by the Native for his/her needs has not been met.

A hearing will be afforded to a Native allotment applicant to show his/her entitlement to a Native allotment in view of court decisions requiring hearings on Native allotment applications. Where the applicant requests a hearing and alleges there are factual disputes concerning abandonment and nonuse of the claim, although the showings on the application show nonuse of the land for a lengthy period of time sufficient ordinarily to constitute a prima facie case for rejection of the application, a hearing is nevertheless mandated.

Mildred Sparks, 42 IBLA 155 (Aug. 19, 1979)

Selection of the land by the State of Alaska under authority of the Statehood Act in 1962, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1962 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

James Sims, 42 IBLA 231 (Aug. 22, 1979)

Lands included in an application for powersite development under the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1976), shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the United States, unless otherwise directed by the Federal Power Commission or by Congress.

Where an applicant for a Native allotment alleges for the first time on appeal his use and occupancy of lands prior to their withdrawal, a decision rejecting the Native's application shall be vacated and the case remanded to BLM for its consideration of appellant's new evidence.

Charles L. John, 42 IBLA 260 (Aug. 27, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Alaska Mental Health Enabling Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the determination to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings. If, however, the Board affirms the finding that the requirements of patent have been met, the State will have no further administrative recourse. Where the State had not, prior to its appeal, been afforded notice of the election, it should be afforded an opportunity to make such election.

A selection filed by the State of Alaska is subject to prior valid existing rights of Natives, irrespective of whether the State selection was filed pursuant to the Alaska Mental Health Enabling Act or the Statehood Act.

State of Alaska v. Mattie D. Barton, 42 IBLA 269 (Aug. 27, 1979)

State of Alaska v. Daniel Johnson, 42 IBLA 370 (Sept. 11, 1979) 86 I.D. 441

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before the trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 *et seq*.

A decision rejecting a Native allotment application because there was not 5 years of use and occupancy of the land prior to a withdrawal affecting the land, will be set aside and the case remanded to the Bureau of Land Management for readjudication in accordance with Secretarial Order No. 3040 of May 25, 1979, which rescinds a former guideline requiring the 5 years prior to the withdrawal and now permits allotment after 5 years' use and occupancy has been completed provided the applicant had either filed an application or commenced use and occupancy prior to a withdrawal.

Ella S. Sheldon et al., 42 IBLA 276 (Aug. 27, 1979)

The Department of the Interior is only authorized to approve Native allotment applications which were pending before the Department on Dec. 18, 1971. If an applicant provides satisfactory evidence that he had delivered his application before that time to the agency office of the Bureau of Indian Affairs which held it past the time when it should have been filed with the Bureau of Land Management, the application may be adjudicated as having been timely filed.

William Yurioff, Gust K. Wahl, Charlie Chocknok, Olia Oyaluk, 43 IBLA 14 (Sept. 11, 1979)

An allotment right is personal to one who has complied with the laws and regulations. An applicant for a Native allotment may not rely on or tack on use and occupancy of the land by his ancestors to establish his right.

A Native allotment applicant, who was 5 years old at the time when the land was withdrawn from all forms of appropriation, is properly deemed to be incapable as a matter of law of having exerted independent use and occupancy of the land to the exclusion of others prior to the withdrawal and consequently the allotment application is properly rejected.

Public Land Order No. 2213 of Dec. 8, 1960, establishing the Kuskokwim National Wildlife Range withdrew certain lands from all forms of appropriation under the public land laws, and although such order preserved to Natives the right to hunt, fish, and trap thereon, the lands were no longer subject to initiation of rights under the Native Allotment Act once the order became effective.

Peter Pangruk, 43 IBLA 69 (Sept. 19, 1979)

The Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1976), repealed the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 to 270-3 (1970), with the exception of applications pending on Dec. 18, 1971. A State Office decision rejecting a Native allotment application for an additional parcel of land filed pursuant to the Act of May 17, 1906, after Dec. 18, 1971, will be affirmed. Equitable adjudication, which requires substantial compliance with the law, will not

be invoked where there is no evidence that such an application was timely filed with BIA.

Nora L. Sanford, 43 IBLA 74 (Sept. 19, 1979)

The substantial use and occupancy as required by the Native Allotment Act must be by the Native herself prior to the effective date of withdrawal, and she may not tack on use and occupancy by her parents or ancestors to establish a right for herself prior to the withdrawal.

A recreation and public purposes classification, issued pursuant to the Recreation Act of 1926, *as amended*, 43 U.S.C. § 869 (1976), segregates Alaskan lands from Native allotment applications until such time as the classification is revoked.

A request for a hearing on a Native allotment application will be denied where no factual dispute exists and all issues are legal ones.

Under Secretarial Order No. 3040, it is sufficient if the 5 years' use and occupancy, required under the Native Allotment Act, is completed prior to the granting of the allotment, providing applicant either filed for his allotment or commenced use and occupancy prior to the withdrawal.

Betty J. Thompson, 43 IBLA 174 (Sept. 28, 1979)

Where an application to acquire Federal land is rejected by BLM for the reason that the applicant's own declaration of material facts stated in his application demonstrate conclusively that he is not entitled to the land as a matter of law, an effort on appeal to revise, amend, or deny the facts will not be considered absent a persuasive explanation of error in the application.

Where the State of Alaska has filed an application to select certain land 2 years prior to the date when an applicant for a Native allotment declares that he first began his use and occupancy of that land, the segregative effect of the State selection will preclude allowance of the Native allotment as a matter of law.

The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen acting for himself, and not as a dependent child visiting and using the land in the company of his parents. Where the allotment applicant admits that this was his only presence on the land prior to its segregation from the operation of public land laws, the allotment application is properly rejected.

Where an Alaska Native allotment application is pending in the Department on the date of repeal of the Allotment Act, an attempt to subsequently amend the application to encompass different or additional land will not be considered as timely filed, and will be rejected as a new application barred by statute, unless it can be shown that there was an error in the original description resulting from the inability to properly identify the site on the protraction diagram.

The segregative effect of a State of Alaska selection application is operative on the land for which the State has applied from the date of filing, and remains in effect until the State's application is finally disposed, during which time no new rights may be initiated. The ultimate disallowance of the State's application will neither negate the segregative effect of its filing on the land, nor validate *nunc pro tunc* any claim initiated during the period when the land was so segregated.

Although the equitable interest of any applicant who has perfected his claim to an allotment may pass by inheritance, the substantial use and occupancy required under the Allotment Act must be achieved by the applicant himself as an independent citizen, and he may not tack the use and occupancy of his ancestors to his own use, or rely on aboriginal rights to establish his personal qualification to receive an allotment.

Where, even if all of the allegations of material fact made by an applicant for a Native allotment are accepted as true, allowance of the application is barred as a matter of law, the rule of Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), is not applicable, and the application is properly rejected without a hearing.

Andrew Petla, 43 IBLA 186 (Oct. 5, 1979)

Settlement upon a tract of land withdrawn from entry is a trespass and provides no basis for any claim to the land under the Alaska Native Allotment Act of May 17, 1906, 34 Stat. 197. Any subsequent revocation or modification of the withdrawal and the restoration of the land to entry will not validate an application for a Native allotment. An application for land withdrawn from entry is nugatory and cannot be given life, even by restoration of land during the pendency of an appeal from its rejection.

Although this Department recognizes a fiduciary relationship of the United States to Alaska Natives, this relationship does not authorize the Secretary to ignore the terms of 43 U.S.C. § 270-1 (1970) limiting Native allotments to those lands which are "vacant, unappropriated, and unreserved."

The preference right authorized by the Alaska Native Allotment Act is a personal one and does not survive the death of the applicant unless the applicant has complied with the law and regulations as to a specific parcel of land available for allotment.

Paul D. Tony, 43 IBLA 245 (Oct. 10, 1979)

The regulations in 43 CFR 2627.4(b) provide that lands applied for by the State of Alaska will be segregated from all appropriations when the State files its application to select. A State selection will not extinguish valid prior existing rights. When Alaskan Natives can prove prior qualifying use and occupancy of selected lands, tentative approvals by the Secretary of the Interior of State land selections must be canceled.

The right to seek an allotment is personal to one who has fully complied with the law and the regulations. An applicant for a Native allotment may not tack on use and occupancy of the land by his ancestors to establish his qualification. Claims based upon "aboriginal rights," or upon use and occupancy by ancestors, are simply not qualified.

The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen for himself (or as head of a family) and not as a minor, dependent child occupying or using the land in the company of his parents. This does not mean that a minor may not establish qualifying use or occupancy--the issue is the nature of the use and occupancy. It must be achieved by an independent citizen in his own right and it must be at least potentially exclusive.

Generally where BLM determines that an Alaska Native allotment application should be rejected because the use of the land by a minor child was not sufficiently established as an independent citizen in his own right, at least potentially exclusive of others, BLM shall issue a contest complaint pursuant to 43 CFR 4.451 et seq., and the guidelines set forth in Donald Peters, 26 IBLA 235, 83 I.D. 308 (1976).

Sarah A. Pence et al., 43 IBLA 266 (Oct. 15, 1979)

An allotment may be granted only when the Native applicant demonstrates actual substantial use and occupancy of the land, at least potentially exclusive of others, and not merely intermittent use. The Bureau of Land Management is the proper agency for determining whether the applicant has satisfactorily proven his or her use and occupancy.

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before the trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 et seq.

Elena Bartman, 43 IBLA 284 (Oct. 17, 1979)

The filing of an acceptable application for a Native allotment segregates the lands designated in the application. The Bureau of Land Management properly rejects subsequent conflicting applications for such lands.

Where legal conclusions are reached upon undisputed facts and there has been no proffer of further facts which could compel different legal conclusions, an allotment application may be rejected as a matter of law subject to the right to appeal to this Board. Hearings under the rule enunciated in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), are required only where there is a factual dispute.

Sec. 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1976), repealed the Native Allotment Act of 1906, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970), except as to applications pending on the date of enactment, Dec. 18, 1971. Accordingly, the Board of Land Appeals has no authority to now permit the selection of lands for allotment.

Norma B. Richards, 43 IBLA 288 (Oct. 17, 1979)

An application pending on Dec. 18, 1971, which is amended after this date to embrace different lands not described in the original application in order to avoid conflicts with earlier claims must be rejected as untimely.

A Native allotment applicant, who was 5 years old at the time when the land was withdrawn from all forms of appropriation, is properly deemed to be incapable as a matter of law of having exerted independent use and occupancy of the land to the exclusion of others prior to the withdrawal and consequently the allotment application is properly rejected.

Ricky Nickoli, 43 IBLA 296 (Oct. 17, 1979)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

decision is reached to reject the application for allotment.

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.450 - 4.452-9.

Amy Tukrook Nukapigak, 44 IBLA 313 (Dec. 31, 1979)

NAVIGABLE WATERS

Generally

Federal title to land may be lost by erosion, and land which has become submerged under water is no longer subject to disposition under the Alaska Native Allotment Act. The fact that an Alaska Native may have used, occupied, and filed an application for such land when it was dry does not prevent the loss of Federal title to that land by erosion. Neither the Alaska Statehood Act nor the Submerged Lands Act prevents the passage of title to such land to the State.

Frank Hulland, 41 IBLA 207 (June 27, 1979) 86 I.D. 342

Impediments to Navigation

Physical impediments to navigation, such as gravel bars, riffles, or occasional log jams, do not, in themselves, make a water body nonnavigable.

The presence of physical impediments on a water body will not result in a finding of nonnavigability when the record shows that the water body has been used and is capable of use as a highway of commerce.

Appeal of Doyon, Ltd., 4 ANCAB 50 (Dec. 14, 1979)
86 I.D. 692

Use of Waterway

Where conditions of exploration and settlement explain the infrequency or limited nature of actual use of a water body for commercial purposes, evidence of private use may be considered to demonstrate susceptibility of commercial use for purposes of determining navigability.

Historic use of a water body by trappers may be properly considered in determining whether a water body has been used or is susceptible of use as a highway of commerce for purposes of navigability.

Where pole boats, tunnel boats, and outboard river boats constituted the customary modes of trade and travel on a river and its tributaries, the use of these watercraft may be appropriately considered in determining whether rivers in the area were used or are susceptible of being used as highways of commerce.

While recreational use, of itself, may not suffice to meet the susceptibility test for purposes of navigation for title, present use for recreation purposes may be properly considered, as a corroborating factor, in determining susceptibility for use as a highway of commerce.

To be navigable, a river must be so situated and have such length and capacity as will enable it to accommodate the public generally as a means of transportation.

When the record shows that, historically, trapping was the primary reason for trade and travel in an area, and where the water body in question was commonly utilized by trappers as a route of trade and travel in boats of

ALASKA--Continued

NAVIGABLE WATERS--Continued

Use of Waterway--Continued

the period customarily used to freight supplies, such use will result in a finding that the water body has been used and is susceptible for use as a highway of commerce.

The presence of physical impediments on a water body will not result in a finding of nonnavigability when the record shows that the water body has been used and is capable of use as a highway of commerce.

The legal concept of navigability embraces both public and private interests. It is not to be determined by a formula which fits every type of stream under all circumstances and at all times.

Appeal of Doyon, Ltd., 4 ANCAB 50 (Dec. 14, 1979)
86 I.D. 692

OIL AND GAS LEASES

Sec. 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims does not apply to an oil and gas lease offer filed pursuant to the Mineral Leasing Act of 1920. While an oil and gas lease offeror may have a right to a lease where the Department has exercised its discretion to issue a lease, and the offeror is entitled to a statutory priority right over other offerors, his application does not rise to the level of a "claim" or "right" within the savings clause of the Alaska Statehood Act where there has been no such determination to lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975)
82 I.D. 174

POSSESSORY RIGHTS

Settlement on a homestead claim in Alaska 2 days prior to a withdrawal of the land does not except the land from the withdrawal where the claimant failed to file his notice of location within 90 days after settlement as required by the Act of Apr. 29, 1950, 64 Stat. 94, 43 U.S.C. §§ 270, 270-5, 270-6 (1970), and his notice is properly held to be unacceptable for recordation.

Gary Lee Slay, 18 IBLA 345 (Jan. 14, 1975)

A claimant's occupancy of a headquarters site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

Rene P. Lamoureux, 20 IBLA 243 (May 16, 1975)

A claimant's occupancy of a homesite prior to a withdrawal does not establish a "valid existing right," excepted by the withdrawal, under the Act of Apr. 29, 1950, where claimant did not file his notice of location within 90 days after occupancy, nor did he file a notice of location or purchase application prior to the withdrawal.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

There can be no "valid existing right" in a claimant of a headquarters site on land withdrawn by Public Land Order No. 4582 unless a notice of location or application to purchase had been filed in accordance with the Act of Apr. 29, 1950. The filing of an application for a survey of omitted land did not by itself create any preference rights to the land.

Notices of location for headquarters sites must be accepted for filing by the authorized Bureau of Land Management office if the land has been subject to location during the preceding 90 days. The fact that land had been omitted from the original survey is not a valid reason for the Bureau of Land Management to refuse to record a properly filed notice of location for a headquarters site.

An application to purchase a headquarters site is subject to rejection if it is filed after the 5-year period from the filing of a notice of location of the claim, or, if no notice had been filed, it was filed more than 90 days after the land has been withdrawn.

Ray W. Ferguson, 22 IBLA 160 (Sept. 30, 1975)

Where the claimant of a headquarters site filed his notice of location, occupied the land, and began making improvements thereon prior to the segregation of the land by a withdrawal made subject to valid existing rights, it is error for the Bureau of Land Management to refuse to record the claimant's notice of location, or to cancel the claim without notice and an opportunity for hearing.

Donald J. Thomas, 22 IBLA 210 (Oct. 15, 1975)

Location of a homesite claim without substantial use or occupancy of the land in compliance with the law creates no property interest in the land. Where the claimant under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) (1970), has merely marked the boundaries of the claim prior to a withdrawal of the land, such activity does not constitute occupation or possession of the land and the claim will be defeated by that withdrawal.

A notice of location for a homesite which alleges only acts of occupancy and improvement insufficient to create any interest in the land is properly denied recordation.

Edward P. Dooley, 22 IBLA 338 (Nov. 14, 1975)

A decree of foreclosure by a United States District Court, which upholds the validity of a deed of trust executed on a trade and manufacturing site, is not subject to collateral attack in the Department of the Interior. Where the applicant to purchase the site has thus been deprived of any interest in the improvements and the site, he is no longer entitled to purchase the site.

Greater Alaska Development Corp., 23 IBLA 179 (Jan. 5, 1976)

The filing of a notice of location for a homesite will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator of the homesite fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right excepted from a withdrawal.

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and alleges that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the Bureau of Land Management to hold that the location notice was unacceptable for recordation, and the claim may only be canceled following notice to the claimant and an opportunity to demonstrate the establishment of a valid existing homesite claim prior to the withdrawal.

Steven F. Heine, 24 IBLA 23 (Feb. 11, 1976)

A trade and manufacturing site notice of location not supported by actual settlement and occupancy authorized by 43 U.S.C. § 687a (1976) does not change the status of the public lands.

John W. Eastland et al., 24 IBLA 240 (Mar. 25, 1976)

James Sims, 42 IBLA 231 (Aug. 22, 1979)

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and he alleges, and the field reports so indicate, that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the State Office to hold that the withdrawal terminated the claimant's rights.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

An Alaska Native Townsite lot applicant is not precluded from settling on and improving a townsite lot until the date of approval of final subdivisional survey except by prior adverse settlement and occupancy; a city does not initiate such an adverse claim by posting lots with "city property" signs without otherwise using or improving the lots.

Ruth E. Sandvik, 26 IBLA 97 (July 19, 1976)

An allotment right is personal to one who has fully complied with the law and regulations and an applicant for a Native allotment may not tack on ancestral use and occupancy of the land to establish his right thereto. Ancestral use of the land while open to settlement does not create any right that excepts the land from a withdrawal in favor of an applicant who may have initiated use and occupancy subsequent to the withdrawal.

Sam Hanlon, Sr., 42 IBLA 161 (Aug. 17, 1979)

STATEHOOD ACT

Sec. 6(k) of the Alaska Statehood Act does not require that patents issued to the State include a proviso that the conveyed lands are vacant, unappropriated, and unreserved, and do not affect any valid existing claim, location or entry under the laws of the United States. The Department assures compliance with this provision by excluding from selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that adequate notice be given to all other persons claiming an interest in the selected land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands.

Sec. 6(i) of the Alaska Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all the minerals in the lands so conveyed. The Act does not require that Federal patents to the State include a proviso to the above effect, rather, it is subsequent State coneyances which must contain a reservation for minerals.

Sec. 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims does not apply to an oil and gas lease offer filed pursuant to the Mineral Leasing Act of 1920. While an oil and gas lease offeror may have a right to a lease where the Department has exercised its discretion to issue a lease, and the offeror is entitled to a statutory priority right over other offerors, his application does not rise to the level of a "claim" or "right" within the savings clause of the Alaska Statehood Act where there has been no such determination to lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

A selection of land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

A selection application by the State of Alaska must be rejected with respect to those public lands which are reserved or withdrawn from entry or other form of disposal under the public land laws of the United States and cannot be held open pending a possible future change of the status of the land.

State of Alaska, 20 IBLA 341 (June 11, 1975)

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 while the grazing lease was still extant, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Herman Haakenson, 23 IBLA 58 (Dec. 4, 1975)

A selection application under the Alaska Statehood Act filed in the appropriate Bureau of Land Management office for properly described land segregates the land from all appropriation based upon subsequent application or settlement and location.

A selection application under the Alaska Statehood Act that describes land according to an approved protraction diagram properly describes those lands if the official plat of survey has not been accepted.

John W. Eastland et al., 24 IBLA 240 (Mar. 25, 1976)

A selection of available land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location. A subsequently filed notice of location for a headquarters site has no effect.

Wilfred S. Wood (On Reconsideration), 25 IBLA 37 (May 6, 1976)

The authority to select lands under the Alaska Mental Health Enabling Act, while confirmed to the State under sec. 6(k) of the Statehood Act, remains separate and distinct from the authority of the State to select lands as provided in secs. 6(a) and (b) of the Statehood Act.

Appeal of Seldovia Native Ass'n, Inc., 1 ANCAB 65 (July 1, 1976) 83 I.D. 461

Lands tentatively approved for State selection and conveyed by the State to municipalities or boroughs prior to enactment of ANCSA are not available for Native selection under ANCSA.

Lands tentatively approved for State selection and leased by the State to individuals with an option to buy will, if selected by a Native corporation, be included in the interim conveyance with the provision that the option to buy may be exercised against the Native corporation. Where the option had been exercised against the State and a State patent issued prior to the enactment of ANCSA, the land will be excluded from interim conveyance to the Native corporation.

Third party rights created by the State in lands selected by Natives under ANCSA should be identified by BLM in the decision to issue interim conveyance if possible, but need not be adjudicated.

ANCSA and the implementing regulations draw a basic distinction between valid existing rights leading to the acquisition of title and those of a temporary nature, requiring exclusion of the former from the interim conveyance but inclusion of the latter with provisions protecting the third parties rights for the duration of his interest. The statute and the implementing regulations do not distinguish, in protecting rights leading to the acquisition of title between those arising under Federal law and those arising under State law.

Valid Existing Rights Under the Alaska Native Claims Settlement Act, Sec. Order No. 3016 (Dec. 14, 1977) 85 I.D. 1 (1978)

Federal title to land may be lost by erosion, and land which has become submerged under water is no longer subject to disposition under the Alaska Native Allotment Act. The fact that an Alaska Native may have used, occupied, and filed an application for such land when it was dry does not prevent the loss of Federal title to that land by erosion. Neither the Alaska Statehood Act nor the Submerged Lands Act prevents the passage of title to such land to the State.

Frank Hulland, 41 IBLA 207 (June 27, 1979) 86 I.D. 302

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on

ALASKA--Continued

STATEHOOD ACT--Continued

Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Norman Opheim, Billy Boskofsky, Jr. (As Heir of Nicholas Boskofsky), 41 IBLA 338 (July 11, 1979)

TIDELANDS

Federal title to land may be lost by erosion, and land which has become submerged under water is no longer subject to disposition under the Alaska Native Allotment Act. The fact that an Alaska Native may have used, occupied, and filed an application for such land when it was dry does not prevent the loss of Federal title to that land by erosion. Neither the Alaska Statehood Act nor the Submerged Lands Act prevents the passage of title to such land to the State.

Frank Bullard, 41 IBLA 207 (June 27, 1979) 86 I.D. 342

TOWNSITES

A city organized under Alaska State law has standing to appeal from the rejection of its application for townsite deeds to land within its city limits, and the awarding of deeds to occupants of the townsite lots at the time of final subdivisional survey.

To the extent they do not vitiate the purposes or provisions of the Alaska Native townsite law, the provisions of the non-Native Alaska townsite law are to be applied in the disposition of Native townsite lands; in such cases, references to the Act of Mar. 3, 1891, 43 U.S.C. § 732 (1970), in the documents relating to a Native townsite are not pro forma, and the non-Native townsite provisions may be applied.

The date determinative of the rights of occupants of Alaska Native townsite land is the date of final subdivisional survey, not the date of patent; if, at the date of final subdivisional survey, the lots are occupied by non-Natives as well as Natives, the lots will be disposed of under both the non-Native and Native townsite provisions.

The Alaska townsite trustee's lot awards will not be disturbed when the appellant challenging the awards fails to assert facts that might demonstrate error in the application of the Alaska townsite rules: (1) that, in the absence of conflicting occupants on the same parcel, occupancy of a portion of a lot is occupancy of the whole lot; (2) that occupancy may be established by the initiation of settlement if the intent to possess and improve is clearly evidenced on the ground; and (3) that lots will be awarded to those who occupy or are entitled to occupancy of the lots at issue.

City of Klawock v. P. H. Andrew et al.; City of Klawock v. State of Alaska, Department of Highways, 24 IBLA 85 (Feb. 25, 1976) 83 I.D. 47

An Alaska Native Townsite lot applicant is not precluded from settling on and improving a townsite lot until the date of approval of final subdivisional survey except by prior adverse settlement and occupancy; a city does not initiate such an adverse claim by posting lots with "city property" signs without otherwise using or improving the lots.

Ruth E. Sandvik, 26 IBLA 97 (July 19, 1976)

ALASKA--Continued

TOWNSITES--Continued

To the extent that the provisions of the non-Native townsite law do not vitiate the purposes of provisions of the Alaska Native townsite law, the provisions of the non-Native townsite law are to be applied in the disposition of Native townsite lands.

The person or persons who may be awarded a deed to a lot in a townsite are those individuals who occupied or who were entitled to occupancy of such lot on the date of final subdivisional survey.

Where there are conflicting claimants to lots in a Native townsite and the record does not clearly reflect who occupied or who was entitled to occupancy of the lots on the date of final subdivisional survey, the Board may, on its own motion, order a hearing.

Louie B. Strang, 26 IBLA 144 (Aug. 2, 1976)

To the extent that the provisions of the non-Native townsite law do not vitiate the purposes of provisions of the Alaska Native townsite law, the provisions of the non-Native townsite regulations may be applied in the disposition of Native townsite lands.

The person or persons who may be awarded a deed to a lot in a townsite are those individuals who occupied the lot on the date of final subdivisional survey or were entitled to such occupancy, or their assigns thereafter.

Where there are conflicting claimants to lots in a Native townsite and the record does not clearly reflect who occupied or who was entitled to occupancy of the lots on the date of final subdivisional survey, the matter will be remanded for clarification.

Nancy A. Delkittie, 35 IBLA 370 (June 23, 1978)

Authority to dispose of land within Alaska railroad townsites under 43 U.S.C. § 975b (1970) was repealed by sec. 704(a) of the Federal Land Policy and Management Act of 1976.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

Where there are conflicting applications for a lot in a Native townsite and the evidence as to who has the better claim is vague and inconclusive, the townsite trustee should submit the matter for a hearing before an administrative law judge. 43 CFR 2565.4(b).

James T. Friedman, 39 IBLA 229 (Feb. 12, 1979)

Rights may be established by occupancy of a trade and manufacturing site on vacant, unappropriated public domain in Alaska and filing of a notice of location thereof, despite a prior survey pursuant to a petition for survey of townsite lands, when the notice of location and occupancy of the claim for trade and manufacturing precedes settlement and occupancy under the townsite laws.

Carl A. Ling, 40 IBLA 63 (Mar. 16, 1979)

ALASKA--Continued

TOWNSITES--Continued

Alaska Natives who occupied lots in a Native townsite on date of approval of final subdivisional townsite survey, prior to Oct. 21, 1976, are entitled to receive deeds thereto from the townsite trustee.

Leona B. Strang (Supp.), 43 IBLA 156 (Sept. 28, 1979)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789, so that no rights under the townsite laws could be derived from occupancy commenced after Oct. 21, 1976.

Stu Mack, 43 IBLA 306 (Oct. 17, 1979)

TRADE AND MANUFACTURING SITES

Under 43 CFR 2091.6-4 and 2562.1(d) a notice of location for a trade and manufacturing site is unacceptable for recordation where the land is not subject to that form of disposition because it has been segregated by State selection applications.

Lloyd Schade, 19 IBLA 251 (Mar. 31, 1975)

One who has qualified for a patent to a trade and manufacturing site may legally take a partner into the business or contract for the sale of the business, and so long as he retains legal title and the sales contract remains executory on the part of the purchaser he is not thereby disqualified from receiving a patent.

Where the claimant of a trade and manufacturing site who has substantially complied with the requirements of law and regulation makes a legitimate contract for the conditional sale of the business to another before filing his application for patent, equitable adjudication will be invoked to prevent an intervening land classification action from operating to destroy the interest of both the claimant and his buyer and defeating the purpose of the Act.

Paul M. Jovick, 19 IBLA 283 (Apr. 7, 1975)

An applicant for a trade and manufacturing site who has sold his entire interest in the claim prior to submitting his purchase application is no longer a qualified applicant under the trade and manufacturing site law. Any rights he may have earlier established terminated at the time he conveyed his interest in the claim.

A transferee of an original locator's possessory interest in a trade and manufacturing site cannot qualify for the site under his transferor's notice to avoid the effect of a withdrawal where the transferee had not filed his own notice or purchase application prior to the withdrawal.

Rights to public land can only be gained by compliance with governing public land laws. Trade and manufacturing site occupancy initiated and continued under a defective notice of location filed in the name of one individual, but alleged to have been filed on behalf of an association of persons, cannot lead to qualification by the association to purchase the site.

Frederick E. Heinz, 20 IBLA 174 (May 7, 1975)

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

Under the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), a notice of location of a trade and manufacturing site filed after withdrawal of the land is acceptable if it is filed within 90 days of settlement and the settlement occurs prior to a withdrawal of the land. An application to purchase based on such an asserted settlement and filing will be rejected when it is not filed within the statutory life of the asserted claim, but the applicant may be afforded an opportunity to submit a justification for his late filing under the principles of equitable adjudication.

Edwin William Seiler (On Reconsideration), 20 IBLA 221 (May 9, 1975)

A locator of a trade and manufacturing location initiates no rights against the United States unless he actually uses and occupies the land for trade and manufacturing purposes. A prospective business site is not within the contemplation of the trade and manufacturing site law; improvements of contiguous land in connection with the development of a prospective trade and manufacturing site create no rights in the locator.

Elden L. Reese, 21 IBLA 251 (Aug. 11, 1975)

Where land within a trade and manufacturing site is withdrawn from appropriation prior to its occupancy and use for purposes of trade or manufacture under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, the invalid claim cannot be perfected.

Allan D. Hodge, 22 IBLA 150 (Sept. 30, 1975)

A decree of foreclosure by a United States District Court, which upholds the validity of a deed of trust executed on a trade and manufacturing site, is not subject to collateral attack in the Department of the Interior. Where the applicant to purchase the site has thus been deprived of any interest in the improvements and the site, he is no longer entitled to purchase the site.

Greater Alaska Development Corp., 23 IBLA 179 (Jan. 5, 1976)

A settlement claim initiated after a State selection application is filed and the land segregated from appropriation creates no rights in the settler.

Any right gained under a notice of location for a trade and manufacturing site or a homesite as required by the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), is personal to the party filing the notice.

A trade and manufacturing site notice of location not supported by actual settlement and occupancy authorized by 43 U.S.C. § 687a (1970) does not change the status of the public lands.

John W. Eastlund et al., 24 IBLA 240 (Mar. 25, 1976)

One who appeals from the rejection of a trade and manufacturing site purchase application and disputes the factual findings and conclusions in the field examiner's report, is not entitled to an opportunity for a hearing on the disputed issues of fact when appellant's assertions of use and improvement, taken as true, do not show use of the land that qualifies her for the right of purchase.

Improvement of land by fencing, and use as horse pasture, constitutes agricultural use which does not qualify as "trade, manufacture, or other productive industry" within the meaning of the Act of May 14, 1898, *as amended*, 43 U.S.C. § 687a (1970), regardless of the type of business in connection with which the pasturage is desired.

Improvement of land by a road, and use of the land for access to a private inholding do not by themselves qualify the locator to purchase the land as a trade and manufacturing site.

Evelyn M. Bunch, 25 IBLA 46 (May 13, 1976)

Where a notice of location is filed for a trade and manufacturing site and such notice is declared unacceptable for recordation because the lands containing the business improvements are tidelands owned by the State of Alaska, the decision must be set aside and the case remanded when the record does not show that there ever was a survey conducted of such lands to determine whether they are, in fact, tidelands owned by the State.

Sandra L. Lough, Damon E. Blackburn, 25 IBLA 96 (June 3, 1976)

Sec. 10 of the Act of May 14, 1898, 30 Stat. 413, 43 U.S.C. § 687a (1970), limits the number of trade and manufacturing sites which any individual or corporation may acquire to one, and actions taken pursuant to advice of Bureau of Land Management employees which consolidate a number of applications into one application, thereby possibly avoiding the proscriptions of sec. 10, do not estop the Government from enforcing the limitation of 80-rods of shoreline on navigable waters to the single application.

B.G.R., Inc., 27 IBLA 27 (Sept. 17, 1976)

A trade and manufacturing site application is properly rejected when there is only a cabin on the site, roads and clearing for a campground and the land has been used intermittently for campsite rentals, only a few people used the campsites during the life of the claim, and any revenues which were derived or could have been derived from use of the site as a campground would not be such as to engender the belief that appellant was engaged in a productive industry or that he hopes to garner a profit from operation of a business.

United States v. Jerry L. Crow, 28 IBLA 345 (Jan. 26, 1977)

A trade and manufacturing site applicant, who alleges that the activities on his trade and manufacturing site were undertaken in conjunction with his primary business which is headquartered at another location, bears the burden of establishing a direct and economic purpose for his trade and manufacturing site in connection with his entire business operation.

A field examination report of a trade and manufacturing site claim is not evidence on which the final action of cancellation may be taken, until such time as the pertinent facts are admitted by the applicant or the report is admitted into evidence at a hearing initiated by a contest complaint.

John H. Coghill, 29 IBLA 177 (Mar. 18, 1977)

An applicant to purchase either a trade and manufacturing site or a headquarters site has the burden of proving that he has complied with the requirements of the law, 43 U.S.C. § 687a (1970). Rejection of such an application is proper where the evidence shows that the tract was used (1) for trapping by the applicant to repay a neighbor for assistance in improving the site, and (2) as a wilderness camp area, and that no substantial revenue was derived from the trapping, and nominal revenues were derived from camping tourists in the park during the life of the claim.

Where an applicant to purchase a trade and manufacturing site or a headquarters site states he was frustrated in completing his improvements and showing sufficient use of the land as required by the law because of more difficult or complex problems than anticipated, but has not shown that this operation could reasonably be expected to be successful, such problems will not afford any basis for equitable adjudication of his application to purchase.

United States v. Ronald D. Tippetts, 29 IBLA 346 (Mar. 31, 1977)

When an applicant for an 80-acre trade and manufacturing site has demonstrated that he has used a substantial portion of that 80-acre parcel for the activity of motorcycle and snow machine testing in connection with his business of motorcycle and snow machine sales located some distance away in Anchorage, Alaska, and that parcel contains substantial improvements made in connection with this testing activity, and he has satisfactorily shown a need for and a direct and necessary economic purpose in furthering his enterprise, the applicant has successfully satisfied the requirements for this trade and manufacturing site.

Where an applicant seeks 80 acres for a trade and manufacturing site, he can only obtain title to as much land in the claim as is actually occupied by improvements and used in his business. Each portion of the site need not contain substantial improvements. It is sufficient to meet the requirements of the law if the applicant can show active use of the unimproved land as an integral part of his business.

David A. Burns, 30 IBLA 359 (June 10, 1977)

Where, in Alaska, a settlement or occupancy claim is initiated by the filing of a location notice which is acceptable on its face at a time when the land is open to the establishment of such a claim, the notice of location is acceptable for recordation by the BLM. But whether the BLM chooses to record the location notice is totally immaterial to a consideration of the validity of the claim, and BLM decisions purporting to adjudicate the validity of any such claim should address that issue on its merits rather than the acceptability of the notice for recordation.

John E. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

Where evidence shows that as of final day of 5-year statutory period for proving up a trade and manufacturing site, claimant's business on site was only prospective, concept of substantial compliance may not properly be invoked to bring claimant within bounds of legal requirements for proving up of such a site. Such evidence showed rough completion of golf course in final month of entry, only $120 gross receipts, and three lifetime memberships in exchange for labor expended in construction of golf course.

Contestee's rights, if any, in trade and manufacturing site claim had to be earned prior to Nov. 23, 1966 (the

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

expiration date of the entry), and no action by BLM after that date could prejudice contestee since the evidence shows her failure to meet requirements during the statutory period. Accordingly, Board rejects equitable estoppel and laches arguments based on asserted BLM actions in 1967 and thereafter.

Since contestee has shown no prejudice suffered as result of delay by BLM in bringing contest, the Board concludes that there is no reason for dismissal of contest based on "reasonable time" provision of 5 U.S.C. § 555(b) (1970).

United States v. Barbara Jean Hill, 33 IBLA 395 (Jan. 30, 1978)

Where land within a trade and manufacturing site is withdrawn from appropriation prior to cognizable occupancy and use for purposes of trade or manufacture under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, an invalid claim cannot be perfected, and appellant has not shown wherein she is entitled to equitable adjudication under 43 CFR 1871.1.

Sandy Pondy, 37 IBLA 48 (Sept. 18, 1978)

A cattle feedlot operation, including cattle handling facilities, grain storage, and logging operations falls within the statutory requisite of "trade, manufacture or other productive industry" as used in the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) (1970), notwithstanding, that a feedlot operation in Alaska may differ in certain respects from a feedlot operation in the lower 48 States.

United States v. Omar Stratman, 37 IBLA 352 (Oct. 30, 1978)

An entryman may not take advantage of sec. 7 of the Act of Mar. 3, 1891, entitling an entryman to a patent after 2 years from date of issuance of a receiver's receipt when there is no pending contest or protest against the validity of the entry, where he has not shown that preconditions of the Act have been met, i.e., making the final payments required.

In a contest proceeding the Government has the burden of establishing a prima facie case of noncompliance with the requirements for trade and manufacturing, and headquarters sites. The burden then shifts to the applicant to show by a preponderance of the evidence that he has used, occupied, and improved the sites for trade, manufacture, or other productive industry.

A claimant of a trade and manufacturing site must show that at the time of filing his application to purchase he was engaged in trade, manufacture, or other productive industry in connection with the sites. While it is not necessary for the claimant to show that all functions of the business were carried on at the site, he must show a bona fide commercial enterprise from which he reasonably hoped to derive a profit; mere preparation for a prospective business is not sufficient under the regulations. A claimant for a headquarters site must also be engaged in such a business or be an employee of such a business.

United States v. Jack Lamar Boyd, Jr., 39 IBLA 321 (Feb. 27, 1979)

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

Rights may be established by occupancy of a trade and manufacturing site on vacant, unappropriated public domain in Alaska and filing of a notice of location thereof, despite a prior survey pursuant to a petition for survey of townsite lands, when the notice of location and occupancy of the claim for trade and manufacturing precedes settlement and occupancy under the townsite laws.

Carl A. Liss, 40 IBLA 63 (Mar. 16, 1979)

Where a trade and manufacturing site is located on land that is withdrawn from appropriation prior to its occupancy and use, an application to purchase is properly denied despite the fact that applicant entered the land as a special use permittee.

Mardelle M. Smith, Sherman C. Smith, 42 IBLA 136 (Aug. 16, 1979)

Any right which may be gained under a notice of location for a trade and manufacturing site or a homesite, as required by the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1976), is personal to the party filing the notice.

A trade and manufacturing site notice of location not supported by actual settlement and occupancy authorized by 43 U.S.C. § 687a (1976) does not change the status of the public lands.

James Sims, 42 IBLA 231 (Aug. 22, 1979)

In a contest proceeding the Government has the burden of establishing a prima facie case of noncompliance with the requirements for trade and manufacturing sites. The burden then shifts to the applicant to show by a preponderance of the evidence that he used, occupied, and improved the site for trade, manufacture, or other productive industry.

A claimant of a trade and manufacturing site must show that at the time of filing his application to purchase he was engaged in trade, manufacture, or other productive industry in connection with the site. While it is not necessary for the claimant to show that all functions of the business were carried on at the site, he must show a bona fide commercial enterprise from which he reasonably hoped to derive a profit; mere preparation for a prospective business is not sufficient under the statute.

United States v. Graham Keith Ward, 43 IBLA 333 (Oct. 29, 1979)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)

GENERALLY

Where a Public Land Order withdrawn land from all forms of appropriation under the public land laws for proper classification of the lands under Alaska Native Claims Settlement Act and for protection of public interest values, but provides that the withdrawn lands are subject to administration by the Secretary of the Interior under applicable laws and regulations and his authority to grant leases, an application for Small Tract lease accompanied by a petition for classification may be accepted for filing by the Bureau of Land Management.

ultimate disposition of the application will be dependent upon the classification of the land involved.

Elizabeth A. Sharp, 19 IBLA 312 (Apr. 7, 1975)

Where approval of an application to purchase sand and gravel pursuant to the Materials Disposal Act of 1947 is opposed by a Native village which has already selected the land on which the sand and gravel is located, and to whom conveyance is imminent, the application will be rejected.

Clarence Wren, 20 IBLA 47 (Apr. 21, 1975)

Lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (Supp. III 1973), are withdrawn from all forms of appropriation under the public land laws, including, without limitation, the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-3 (1970), and an application under the latter Act for such withdrawn lands is properly rejected.

Alaska Department of Fish and Game, 20 IBLA 50 (Apr. 23, 1975)

The requirement of 5 years' use and occupancy to receive an allotment under the Native Allotment Act must have occurred prior to Dec. 18, 1971, as the Alaska Native Claims Settlement Act extinguished all such unperfected claims from that day forward.

Warner Bergman, 21 IBLA 173 (July 25, 1975)

The requirement of use and occupancy for a period of 5 years in order to receive an allotment under the Alaska Native Allotment Act must be completed by Dec. 18, 1971. If an applicant for a Native allotment has not completed the 5 years prior to that date, he does not qualify under the Alaska Native Allotment Act.

John A. Paine, 22 IBLA 56 (Sept. 17, 1975)

Where an application for an allotment by an Alaskan Native includes land in a State of Alaska selection application that has been tentatively approved to the State, and where the Native alleges occupancy and use from a date prior to the filing of the State selection, the allotment application may be granted, if the facts alleged are ultimately proved and the application is regular in all other respects.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

Lands withdrawn for the protection of Alaska Natives' selection rights are not available for oil and gas leasing under the Mineral Leasing Act. 43 U.S.C. § 1621(i) (Supp. III. 1973).

A pending noncompetitive oil and gas lease offer is not a valid existing right protected by the savings clause in the Alaska Native Claims Settlement Act.

James W. Canon et al., 1 SEC. 1 (Apr. 15, 1977)
84 I.D. 176

Provision in sec. 4(b) of the Alaska Native Claims Settlement Act requiring the Secretary to issue patents to all persons who have made a lawful entry on the public lands in compliance with the public land laws for the purpose of gaining title to homesteads, prior to Aug. 31, 1971, does not apply to an invalid settlement claim on withdrawn land.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

The Alaska Native Claims Appeal Board, in its discretion, will not rule on issues raised on appeal which were not the grounds cited by the Bureau of Land Management for rejection of applicant's application and which are not dispositive of the issue on appeal.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977)
84 I.D. 891

The Alaska Native Claims Appeal Board cannot ignore existing and related laws and decisions whether raised by the parties or not when the same are dispositive of the appeal itself.

Appeal of Ketchikan Indian Corp., 2 ANCAB 169 (Nov. 8, 1977)

Lands tentatively approved for State selection and conveyed by the State to municipalities or boroughs prior to enactment of ANCSA are not available for Native selection under ANCSA.

Lands tentatively approved for State selection and leased by the State to individuals with an option to buy will, if selected by a Native corporation, be included in the interim conveyance with the provision that the option to buy may be exercised against the Native corporation. Where the option had been exercised against the State and a State patent issued prior to the enactment of ANCSA, the land will be excluded from interim conveyance to the Native corporation.

Third party rights created by the State in lands selected by Natives under ANCSA should be identified by BLM in the decision to issue interim conveyance if possible, but need not be adjudicated.

ANCSA and the implementing regulations draw a basic distinction between valid existing rights leading to the acquisition of title and those of a temporary nature, requiring exclusion of the former from the interim conveyance but inclusion of the latter with provisions protecting the third parties rights for the duration of his interest. The statute and the implementing regulations do not distinguish, in protecting rights leading to the acquisition of title between those arising under Federal law and those arising under State law.

Valid Existing Rights Under the Alaska Native Claims Settlement Act, Sec. Order No. 3016 (Dec. 14, 1977)
85 I.D. 1 (1978)

The determination that a Village Corporation is eligible under sec. 11 of ANCSA is a finding that such village had at least a minimum Native population of 25 on the 1970 census enumeration date and thus entitles such village to at least the minimum acreage allocation pursuant to sec. 14(a) of ANCSA.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 183 (Dec. 19, 1977)

Continued--

GENERALLY--Continued

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 187 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 191 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 195 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 199 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 203 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 207 (Dec. 19, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 223 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 227 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 231 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 235 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 239 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 243 (Dec. 20, 1977)

U.S. Fish and Wildlife Service, 2 ANCAB 264 (Jan. 23, 1978)

Appeal of State of Alaska, 2 ANCAB 284 (Feb. 1, 1978)

The determination that a Village Corporation is eligible under sec. 11 of ANCSA is a finding that such village had at least a minimum Native population of 25 on the 1970 census enumeration date and thus entitles such village to at least the minimum acreage allocation of 69,120 acres of land pursuant to sec. 14(a) of ANCSA.

Appeal of Omar Stratman et al., 2 ANCAB 329 (Mar. 23, 1978)

Where the Bureau of Land Management records reveal that lands in Alaska have been withdrawn under PLO 5250 and certain of those lands have not been recommended, pursuant to sec. 17(d)(2)(C), Alaska Native Claims Settlement Act of Dec. 18, 1971, 43 U.S.C. § 1616(d)(2)(C) (Supp. IV 1974), for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems within 2 years of the date of the Act, such lands do not nevertheless become available for appropriation under the mining laws. This conclusion is compelled by the reason that PLO 5250 is based upon E.O. 10355, which not only invokes 43 U.S.C. §§ 141-142 (1970), but also the President's general or inherent authority to withdraw public lands completely from mining location.

Sally Lester et al. (On Reconsideration), 35 IBLA 61 (May 10, 1978)

GENERALLY--Continued

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Harry R. Wilson, 35 IBLA 349 (June 19, 1978)

As an amendment to the Alaska Native Claims Settlement Act, P.L. 94-204 (89 Stat. 1145, 43 U.S.C. § 1611 (Supp. IV, 1974)), is subject to both the provisions of ANCSA and the regulations promulgated to implement ANCSA, unless such provisions or regulations conflict with, or are specifically excepted or preempted in the amendment.

Appeal of Cook Inlet Region, Inc., 3 ANCAB 111 (Dec. 27, 1978) 85 I.D. 462

The Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1976), repealed the Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970), with the exception of applications pending on Dec. 18, 1971. A State Office decision rejecting a Native allotment application for an additional parcel of land filed pursuant to the Act of May 17, 1906, after Dec. 18, 1971, will be affirmed. Equitable adjudication, which requires substantial compliance with the law, will not be invoked where there is no evidence that such an application was timely filed with BIA.

Nora L. Sanford, 43 IBLA 74 (Sept. 19, 1979)

ABORIGINAL CLAIMS

Sec. 4 of ANCSA states:
"(a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to sec. 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.
"(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.
"(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or State court or the Indian Claims Commission, are hereby extinguished."

The effect of the extinguishment of aboriginal claims by § 4 of ANCSA, as explained in the Conference Report (S. Rep. No. 92-581), 92d Cong., 1st Sess., 40 (1971) and interpreted by Edwardsen v. Morton, 369 F. Supp. 1359 (D.C. Cir. 1973), necessarily defeats arguments that Mental Health lands remained public lands based on assertions of aboriginal title.

Appeal of Seldovia Native Ass'n, Inc., 1 ANCAB 65 (July 1, 1976) 83 I.D. 461

ABORIGINAL CLAIMS--Continued

In express provisions of the Treaty of Cession and the Organic Act of 1884, and through disclaimers in the Statehood Act, aboriginal title in Alaska received statutory protection in addition to that normally extended on the basis of Native occupancy.

Until Congress acted to extinguish rights of Alaskan Natives to use and occupancy of aboriginal lands, such rights remained as an encumbrance on the fee, and title to land claimed by Alaska Natives, to which use and occupancy might be proved, was void when given.

Prior to ANCSA, the State's interest in its tentatively approved selections was subject to divestment upon proof of Native use and occupancy, and was subject to Congressional resolution of such claims. Unadjudicated claims of aboriginal title remained the only impediment to selection of such lands.

The express terms of secs. 11 and 12 of ANCSA make lands previously TA'd to the State of Alaska available for selection by qualified Native Corporations, indicating the conclusion of Congress that such lands were subject to disposal in settlement of Native claims.

The retroactive extinguishment of aboriginal title, and the resulting validation of State title, mandated by sec. 4(a) of ANCSA, applies to those lands tentatively approved to the State which are located outside Native village withdrawal areas.

Extinguishment of aboriginal title did not vest the State's title to those TA'd lands located within sec. 11(a)(2) withdrawal areas, for Congress clearly conferred on Native village corporations a superior right to select up to 69,120 acres of such lands.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976)
83 I.D. 619

Until Congress acted to extinguish rights of Alaskan Natives to use and occupancy of aboriginal lands, such rights remained as an encumbrance on the fee, and title to land claimed by Alaska Natives, to which use and occupancy might be proved, was void when given.

The retroactive extinguishment of aboriginal title, and the resulting validation of State title, mandated by sec. 4(a) of ANCSA, applies to those lands tentatively approved to the State which are located outside Native village withdrawal areas.

Extinguishment of aboriginal title did not vest the State's title to those TA'd lands located within sec. 11(a)(2) withdrawal areas, for Congress clearly conferred on Native Village Corporations a superior right to select up to 69,120 acres of such lands.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

The Alaska Native Claims Settlement Act extinguished aboriginal occupancy claims of Alaska Natives; such claims cannot serve as a bar to a State selection, nor preclude the State from challenging Native allotment applications conflicting with its selection.

Under the "functional" standard to determine administrative standing set forth in Koniag, Inc. v. Andrus, 580 F.2d 601 (D.C. Cir. 1978), cert. denied, 99 S. Ct. 733 (1979), the State of Alaska has standing to challenge Native allotment applications conflicting with its selection applications even if the land is within a Native village selection area under the Alaska Native Claims Settlement Act. The State has standing under Departmental regulations to initiate private contests against such conflicting Native allotment applications.

State of Alaska et al., 41 IBLA 315 (July 11, 1979)
86 I.D. 361

ADMINISTRATIVE PROCEDURE

Generally

Absent another party aligned in interest with the appellant(s) or other reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant(s) before the Board withdraw(s) the appeal.

Appeal of NANA Regional Corp., Inc., 1 ANCAB 1 (Sept. 11, 1975)

Appeal of Karen Conis, 1 ANCAB 6 (Oct. 6, 1975)

Appeal of Nicholas J. Laktonen, Sr., 1 ANCAB 7 (Oct. 6, 1975)

Appeal of State of Alaska, 1 ANCAB 10 (Oct. 6, 1975)

Appeal of State of Alaska, 1 ANCAB 72 (May 12, 1976)

Appeal of RCA Alaska Communications, Inc., 1 ANCAB 94 (July 8, 1976)

Appeal of Doyon, Ltd., 1 ANCAB 98 (July 9, 1976)

Appeal of Doyon, Ltd., 1 ANCAB 101 (July 9, 1976)

Appeal of State of Alaska, Department of Fish and Game, 1 ANCAB 179 (Oct. 21, 1976)

Appeal of the State of Alaska, Department of Fish and Game, 1 ANCAB 182 (Oct. 21, 1976)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 1 ANCAB 317 (Apr. 8, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 1 ANCAB 322 (Apr. 8, 1977)

Appeal of State of Alaska, 1 ANCAB 327 (Apr. 15, 1977)

Appeal of NANA Regional Corp., Inc., 1 ANCAB 334 (Apr. 15, 1977)

Appeal of U.S. Fish and Wildlife Service, 1 ANCAB 341 (Apr. 20, 1977)

Appeal of State of Alaska, 1 ANCAB 345 (May 6, 1977)

Appeal of State of Alaska, 1 ANCAB 348 (May 6, 1977)

Appeal of State of Alaska, 1 ANCAB 351 (May 6, 1977)

Appeal of State of Alaska, 1 ANCAB 354 (May 6, 1977)

Appeal of Kodiak Island Borough and the City of Kodiak, 2 ANCAB 123 (July 25, 1977)

Appeal of [illegible], Ltd., 2 ANCAB 181 (Dec. 16, 1977)

Appeal of Natives of Akhiok, Inc., 2 ANCAB 275 (Jan. 27, 1978)

43 CFR 4.913(b) provides:
"Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

by the Alaska Native Claims Appeal Board, or the Secretary or his delegate."

Absent another party aligned in interest with the appellant or other reason from the record file justifying the continuance of the appeal, the appeal will be dismissed pursuant to the terms of the settlement agreement to which appellant is party.

Appeal of Ukpeagvik Inupiat Corp., 1 ANCAB 185 (Nov. 1, 1976)

Since ANCSA recognizes and protects State-created interests as valid existing rights, as well as interests recognized or created under Federal law, and thus involves interests which would not be of record in the BLM land office, BLM's administrative responsibility to identify, adjudicate and protect "valid existing rights" under ANCSA, are broader than under general Federal public land laws.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Where the Secretary pursuant to regulations in 43 CFR 4.5 takes original jurisdiction of a case and renders the final decision in the matter, the Board is bound by his findings, conclusions, and statements of Departmental policy in such decision.

Where BLM, in accord with Secretarial policy, rejects a noncompetitive oil and gas lease offer because of a conflict with a conveyance under ANCSA, such rejection by BLM constitutes final agency action from which no administrative appeal will lie by the offeror to the Board or to the Interior Board of Land Appeals.

Appeal of R. W. Wargo, 2 ANCAB 98 (July 15, 1977)

Appeal of William G. Samuel, 2 ANCAB 115 (July 15, 1977)

Appeal of Terry R. Kriss and J. Burglin, 2 ANCAB 126 (Aug. 4, 1977)

Appeal of Clifford C. Burglin, 2 ANCAB 134 (Aug. 4, 1977)

The Alaska Native Claims Appeal Board and the Bureau of Land Management are bound by the rules and regulations enacted by the Department of the Interior.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977) 84 I.D. 891

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

The Board vacates its previous ruling that BLM's rejection of a noncompetitive oil and gas lease offer,

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

because of conflict with an ANCSA conveyance, constitutes final agency action from which no appeal will lie.

Appeal of Terry R. Kriss and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board withdraws the appeal.

Appeal of Darrell R. Short, 2 ANCAB 290 (Feb. 13, 1978)

Appeal of State of Alaska, Department of Fish and Game, 2 ANCAB 325 (Mar. 9, 1978)

Appeal of Kodiak Island Borough, 3 ANCAB 74 (Aug. 16, 1978)

Appeal of Kenneth Arndt, 3 ANCAB 127 (Jan. 15, 1979)

Appeal of Al L. Weatherly, 3 ANCAB 165 (Feb. 22, 1979)

Appeal of Saxman Native Corp. and Cambell Native Corp., 3 ANCAB 190 (Apr. 6, 1979)

Appeal of Alaska Packers Ass'n, Inc., 4 ANCAB 1 (Oct. 17, 1979)

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

Appeals of Ethel L. and Charles J. Clark, Ruth Carpenter, et al., & Mary Francis Bothwell, 2 ANCAB 302 (Feb. 21, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

The Board vacates its previous ruling that BLM's rejection of a noncompetitive oil and gas lease offer, because of conflict with an ANCSA conveyance, constitutes final agency action from which no appeal will lie.

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which statements of reasons and standing may be filed.

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the remaining appellant before the Board withdraws its appeal.

Appeal of City of Kodiak and In the Matter of Port Lions Native Corp., 3 ANCAB 85 (Sept. 14, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board requests that the appeal be dismissed.

Appeal of J. Bruce Crow, 3 ANCAB 96 (Nov. 20, 1978)

Appeal of Doyon, Ltd., 3 ANCAB 105 (Dec. 11, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant and all parties of record before the Board stipulate to a dismissal of the appeal.

Appeal of State of Alaska, Dept. of Transportation and Public Facilities, 3 ANCAB 124 (Jan. 5, 1979)

Appeal of the State of Alaska, 4 ANCAB 108 (Dec. 19, 1979)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

ANCAB is bound by statements of Secretarial policy contained in Secretarial Orders published in the *Federal Register*.

Appeal of State of Alaska, 3 ANCAB 129 (Jan. 19, 1979)
86 I.D. 45

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board files a voluntary dismissal.

Appeal of Kenai Peninsula Borough, 3 ANCAB 258 (May 18, 1979)

This Board does not have jurisdiction to adjudicate the Secretary's authority to withdraw lands for possible selection by a Native corporation pursuant to § 14(h)(8) of ANCSA.

Appeal of the State of Alaska, 3 ANCAB 285 (June 11, 1979)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the parties stipulate to a dismissal of the appeal.

Appeal of State of Alaska, Department of Transportation, 3 ANCAB 291 (June 29, 1979)

Appeal of the State of Alaska, 3 ANCAB 294 (July 10, 1979)

The Board is bound by Secretarial policy and interpretation of law expressed in a Solicitor's Opinion in which the Secretary of the Interior concurred.

Regulations in 43 CFR 2650.5-1(b) deal explicitly with chargeability of acreage and implicitly with land title, establishing two categories of submerged lands not required to be selected and charged: those underlying navigable waters, and those underlying nonnavigable waters of one-half section or more.

Under regulations in 43 CFR 2650.5-1(b), Federal ownership of submerged lands does not require all such lands to be charged against a Native corporation's acreage entitlement.

The Secretary, and this Board, are bound by duly promulgated regulations of the Department.

As between a published regulation applicable to chargeability of submerged land and an unpublished Departmental decision paper applicable to the same issue, the Board is bound to follow the regulation. Therefore, regardless of whether the United States retains ownership of the bed of the Colville River, the Bureau of Land Management must, pursuant to 43 CFR 2650.5-1(b), determine whether the river is navigable and, if it is found navigable, must exclude the riverbed from the acreage to be charged against Kuugpik's entitlement.

Appeal of State of Alaska, 3 ANCAB 297 (July 31, 1979)
86 I.D. 381

Applications

Primary Place of Residence

Under sec. 14(h)(5) of ANCSA and 43 CFR Part 2653, an applicant who desired to file an application for the conveyance of a primary place of residence was required to do so by Dec. 18, 1973, regardless of the status of the land at the date of filing.

Neither the Act nor regulations permit an applicant for a primary place of residence to refile an application for a primary place of residence once a sec. 11 withdrawal terminates and the land becomes available for selection as a primary place of residence.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977) 84 I.D. 891

Decisions

The Decision of the Bureau of Land Management vacating the previously granted tentative approval and rejecting the land selection application of the State of Alaska must be vacated and remanded for further proceedings when it does not appear that the land selection application by the Native Corporation has been adjudicated.

Appeal of the State of Alaska, 1 ANCAB 281 (Dec. 20, 1976) 83 I.D. 685

Where Departmental regulations provide for the elapse of a 30-day appeal period before a decision to convey becomes final, waiver by one of a number of parties who might appeal does not render BLM's decision final so as to permit conveyance before elapse of the 30-day appeal period.

While decisions of the Bureau of Land Management and documents conveying title to Native corporations pursuant to ANCSA properly contain a general provision protecting "valid existing rights" in accordance with the provisions of sec. 14(g) of ANCSA and the regulations in 43 CFR 2650, such documents must additionally describe valid existing rights according to the nature of the right and approximate location on the land, and may incorporate by reference other BLM files and files of the Alaska Division of Lands only as a supplemental source of information.

Under ANCSA and the regulations in 43 CFR 2650, the Bureau of Land Management has the duty to ascertain whether a less-than-fee interest was issued to a third party, and must recite in the decision approving lands for conveyance to a Native Corporation that the conveyance is "subject to" such an interest.

Where the claimed "valid existing rights" were created by the State on lands tentatively approved to the State under the Statehood Act, the adjudication of the State's selection must be consolidated with the adjudication of the Native land selection, and valid existing rights in the land must be determined in a single decision.

Both the decision to convey lands, and the interim conveyance, must specifically identify those interests protected under ANCSA as valid existing rights. Where the title conveyed will be "subject to" a less-than-fee interest, the nature of the interest must be identified and the lands affected must be described, at least by section and, where possible, according to the smallest legal subdivision.

Decisions to convey and interim conveyances should, as a minimum, state the use for which each easement is reserved, state the width of each easement, state at least the sections through which an easement passes or, if a site easement, the section or sections in which the easement is located; alternatively, the easement could be located by incorporating in the conveyance document a map depicting the easement.

Where the Bureau of Land Management has developed new procedures for the reservation and identification of easements subsequent to issuance of a Decision to Convey, the Board will remand the Decision to Convey to the Bureau of Land Management for the limited purpose of identifying the easements reserved in the Decision to Convey under appeal according to the uniform easement identification system currently being followed.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which Statements of Reasons and Standing may be filed.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Appeal of Jerry S. Beach, 2 ANCAB 277 (Jan. 26, 1978)

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which Statements of Reasons and Standing may be filed.

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

When a Secretarial decision purports to decide multiple appeals designated by docket numbers in the caption, all interests included within each group of appeals designated by a docket number are adjudicated by such a decision.

Appeal of Gayle D. Fogelson, 2 ANCAB 316 (Mar. 7, 1978)

Estoppel

The State Director, Bureau of Land Management, is not estopped from denying appellant's (Village Corporation) application for certain lands because BLM erroneously included those lands on its land records and on the map of lands sent to appellant as eligible for withdrawal under sec. 11(a)(1) of ANCSA.

Appeal of Tanacross, Inc., 2 ANCAB 379 (May 12, 1978)
85 I.D. 97

Interim Conveyance

An agreement in settlement of an appeal which requires the Bureau of Land Management to include specified provisions in Interim Conveyances to be issued in the future, but which does not require BLM to amend an Interim Conveyance that has already been issued by the addition of easements thereto, may be approved by the Board without consideration of BLM's authority to amend Interim Conveyances.

Appeal of State of Alaska, 1 ANCAB 51 (June 18, 1976)

Where Departmental regulations provide for the elapse of a 30-day appeal period before a decision to convey becomes final, waiver by one of a number of parties who might appeal does not render BLM's decision final so as to permit conveyance before elapse of the 30-day appeal period.

The interests described in sec. 14(g) of ANCSA are of a temporary or limited nature, in contrast to those interests derived from laws leading to a grant of fee title such as the entries protected by sec. 22(b). Inclusion in Native conveyances of lands subject to such interests, under administrative arrangements outlined in sec. 14(g) is appropriate, because such temporary or limited interests are not incompatible with Native ownership of the fee.

Leases issued for the surface or minerals covered by a Native selection constitute a valid existing right protected by sec. 14(g) of ANCSA and any conveyance to a Native Corporation of lands on which such a lease has issued must be subject to the leasehold interest.

State-issued permits and contracts for resource uses issued to third parties before Dec. 18, 1971, are protected as valid existing rights under sec. 14(g) of ANCSA, and any conveyance to a Native Corporation of lands on which such permits or contracts have been issued must be subject to such interests.

Under ANCSA and the regulations in 43 CFR 2650, the Bureau of Land Management has the duty to ascertain whether a less-than-fee interest was issued to a third party, and must recite in the decision approving lands for conveyance to a Native Corporation that the conveyance is "subject to" such an interest.

Both the decision to convey lands, and the interim conveyance, must specifically identify those interests protected under ANCSA as valid existing rights. Where the title conveyed will be "subject to" a less-than-fee interest, the nature of the interest must be identified and the lands affected must be described, at least by section and, where possible, according to the smallest legal subdivision.

Decisions to convey and interim conveyances should, as a minimum, state the use for which each easement is reserved, state the width of each easement, state at least the sections through which an easement passes or, if a site easement, the section or sections in which the easement is located; alternatively, the easement could be located by incorporating in the conveyance document a map depicting the easement.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Third party rights created by the State in lands selected by Natives under ANCSA should be identified by BLM in the decision to issue interim conveyance if possible, but need not be adjudicated.

ANCSA and the implementing regulations draw a basic distinction between valid existing rights leading to the acquisition of title and those of a temporary nature, requiring exclusion of the former from the interim conveyance but inclusion of the latter with provisions protecting the third parties rights for the duration of his interest. The statute and the implementing regulations do not distinguish, in protecting rights leading to the acquisition of title between those arising under Federal law and those arising under State law.

Valid Existing Rights Under the Alaska Native Claims Settlement Act, Sec. Order No. 3016 (Dec. 14, 1977)
85 I.D. 1 (1978)

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which Statements of Reasons and Standing may be filed.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

An interim conveyance is the conveyance of title to unsurveyed lands, subject to the reservations set forth in sec. 14(c) and other sections of ANCSA, and in other provisions of law.

Appeal of Kodiak Island Setnetters Ass'n, 3 ANCAB 1 (June 12, 1978) 85 I.D. 200

Appeal of Mark A. Wartes et al., 3 ANCAB 21 (June 21, 1978)

Appeal of Mr. & Mrs. G. Gregory Moo, 3 ANCAB 27 (June 26, 1978)

Appeal of Kodiak Island Borough, 3 ANCAB 65 (July 11, 1978)

The granting of a right-of-way under FLPMA and the superseded Acts of Feb. 15, 1901, and Mar. 4, 1911, is within the Secretary's discretion and neither the filing of the application nor the existence of improvements earns appellant a right to the right-of-way. No rights vest in the applicant until the grant is approved by the Secretary. An application for a right-of-way is properly rejected where the land is in an interim conveyance to a Native Corporation.

"Public Lands." Land within an interim conveyance to a Native Corporation is no longer "public land" under the Federal Land Policy and Management Act nor subject to Bureau of Land Management jurisdiction to issue rights-of-way under that Act.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ADMINISTRATIVE PROCEDURE--Continued

Settlement Approval

43 CFR 4.913(b) provides: "Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary or his delegate." When the Bureau of Land Management is the only agency of the U.S. Department of the Interior which is a party to the appeal, and a settlement agreement does not require or provide for future action or forbearance from action by any agency of the U.S. Department of the Interior, an appeal from a Decision of the Bureau of Land Management will be dismissed upon the motion of the appellant based upon a settlement agreement, and no approval of the settlement agreement is required by the Board, or the Secretary or his delegate.

Appeal of RCA Alaska Communications, Inc., 1 ANCAB 94 (July 8, 1976)

Standing

The State of Alaska has standing to appeal a Decision of the Bureau of Land Management to the Alaska Native Claims Appeal Board as a party "who claims a property interest in land affected" by a Decision of the Bureau of Land Management, within the meaning of 43 CFR 4.902, when the BLM Decision vacates the tentative approval previously given to the State's selection and rejects the State's land selection application filed under the Alaska Statehood Act because of a conflict with the provisions of the Alaska Native Claims Settlement Act.

Appeal of the State of Alaska, 1 ANCAB 201 (Dec. 20, 1976)
83 I.D. 685

ALASKA NATIVE CLAIMS APPEAL BOARD

Administrative Procedure

Decisions

ANCAB is bound by the rules and regulations promulgated by the Secretary of the Interior pursuant to sec. 25 of ANCSA.

Appeal of Eyak Corp., 1 ANCAB 132 (Sept. 9, 1976)
83 I.D. 484

The Board is bound by statements of Secretarial policy contained in Secretarial Orders published in the *Federal Register*.

Appeal of Ouzinkie Native Corp., 4 ANCAB 3 (Oct. 31, 1979)
86 I.D. 618

Appeal of William J. and Jean B. Schwaab, 4 ANCAB 17 (Oct. 31, 1979)

Interim Conveyance

A special use permit shall be terminated upon issuance of a decision of interim conveyance to a Native corporation when the permit contains language to the effect that should the permit fall within the boundaries of a present or future Native claims selection area, such permit will be terminated.

Appeal of Yak-Tat Kwaan, Inc., 3 ANCAB 182 (Mar. 20, 1979)

Interim conveyance and patent are documents of equal significance in the granting of title under ANCSA, and when interim conveyance has been issued, the Secretary and this Board lose jurisdiction over those interests in land which has been conveyed.

Appeal of James W. Lee, 3 ANCAB 334 (Aug. 31, 1979)

Standing

Where, pursuant to Departmental regulations, a party must claim a property interest in land affected by a decision in order to have standing to appeal such a decision, and the Secretary has found as a matter of law that a noncompetitive oil and gas lease offeror has no property interest in his offer, the Board finds that an offeror for a noncompetitive oil and gas lease does not have standing under 43 CFR 4.902 to appeal a BLM decision to reject his lease offer, or to issue a conveyance to a Native Corporation under ANCSA.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Appeals of Ethyl E. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antwell, 2 ANCAB 302 (Feb. 21, 1978)

In the absence of any interest in the lands in issue, the appellant has no standing to raise the necessity of a sec. 3(e) determination.

Appeal of State of Alaska, 3 ANCAB 11 (June 20, 1978)
85 I.D. 219

Appeals

Generally

Where the Secretary pursuant to regulations in 43 CFR 4.5 takes original jurisdiction of a case and renders the final decision in the matter, the Board is bound by his findings, conclusions, and statements of Departmental policy in such decision.

Appeal of E. H. Wargo, 2 ANCAB 98 (July 15, 1977)

Appeal of William G. Zaegel, 2 ANCAB 115 (July 15, 1977)

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 126 (Aug. 4, 1977)

Appeal of Clifford C. Burglin, 2 ANCAB 134 (Aug. 4, 1977)

A regulation enacted to implement the sale of isolated tracts pursuant to 43 U.S.C. § 1171 which defined the term "cornering" for purposes of that Act and which was not enacted pursuant to ANCSA, is not binding upon this

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Generally--Continued

Board in interpreting the meaning of the phrase "cornering" pursuant to sec. 11(a) of ANCSA.

This Board will not reverse an administrative determination of the Bureau of Land Management that is a reasonable, consistently applied interpretation of the law, and on which many Village Corporations relied in making their land selections under ANCSA, even though it is not the only reasonable interpretation of the statute.

Appeal of Eklutna, Inc., 2 ANCAB 214 (Dec. 19, 1977) 84 I.D. 982

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

Appeal of Terry R. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Generally--Continued

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

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The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which statements of reasons and standing may be filed.

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

ANCAB is bound by statements of Secretarial policy contained in Secretarial Orders published in the *Federal Register*.

A timely appealed Bureau of Land Management decision does not constitute a final Departmental decision as that term is used in sentence 5, sec. 2 of S.O. 3029.

Appeal of State of Alaska, 3 ANCAB 129 (Jan. 19, 1979) 86 I.D. 45

The Board is bound by Secretarial policy and interpretation of law expressed in a Solicitor's Opinion in which the Secretary of the Interior concurred.

The Secretary, and this Board, are bound by duly promulgated regulations of the Department.

As between a published regulation applicable to chargeability of submerged land and an unpublished Departmental decision paper applicable to the same issue, the Board is bound to follow the regulation. Therefore, regardless of whether the United States retains ownership of the bed of the Colville River, the Bureau of Land Management must, pursuant to 43 CFR 2650.5-1(b), determine whether the river is navigable and, if it is found navigable, must exclude the riverbed from the acreage to be charged against Kuugpik's entitlement.

Appeal of State of Alaska, 3 ANCAB 297 (July 31, 1979) 86 I.D. 381

Generally--Continued

Until a village corporation makes its determination of an appellant's rights claimed under § 14(c) of ANCSA (85 Stat. 688, 703, 43 U.S.C. §§ 1601, 1613(c) (Supp. I 1977)), there is no way to determine if a dispute exists between a person claiming under § 14(c) and the village corporation.

There is no administrative appeal process available to claimants under § 14(c) of ANCSA, and such claims must be brought in a judicial forum.

Appeal of James W. Lee, 3 ANCAB 334 (Aug. 31, 1979)

Dismissal

An appeal to the Alaska Native Claims Appeal Board will be dismissed as being untimely filed when the appellant fails to file a Notice of Appeal within the time limits set forth in 43 CFR 2650.7(d).

Appeal of Mark J. Cottini, 2 ANCAB 327 (Mar. 22, 1978)

Jurisdiction

Issues arising from GSA's disposal of lands as "surplus property" pursuant to the Federal Property and Administrative Services Act are not within the jurisdiction of the Board.

Appeal of Ounalashka Corp., 1 ANCAB 104 (July 13, 1976)
83 I.D. 475

In the absence of evidence that a primary place of business of a Native applicant would also qualify as a primary place of residence within the meaning of sec. 14(h) of ANCSA and the regulations in 43 CFR Part 2650, *as amended*, 41 FR 14734 (Apr. 7, 1976), neither the Bureau of Land Management nor this Board have jurisdiction to adjudicate the merits of a primary place of business application under sec. 14(c)(1) of ANCSA.

Appeal of Natalie Simeonoff, 1 ANCAB 116 (Aug. 10, 1976)

The Alaska Native Claims Appeal Board does not have jurisdiction to adjudicate the Secretary's authority to withdraw and reserve public lands for a utility and transportation corridor within the meaning of sec. 17(c) of the Alaska Native Claims Settlement Act.

Appeal of Wisenak, Inc., 1 ANCAB 157 (Sept. 15, 1976)
83 I.D. 496

Under 43 CFR, Part 4, 4.1(5) and Subpart J, the Alaska Native Claims Appeal Board has jurisdiction over an appeal by the State of Alaska from an adverse decision of the Bureau of Land Management on a land selection application pursuant to the Alaska Statehood Act when the BLM's adverse decision is based upon a construction of the provisions of the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. IV 1974), *as amended*, 89 Stat. 1145 (1976).

Appeal of the State of Alaska, 1 ANCAB 281 (Dec. 20, 1976)
83 I.D. 685

When an interim conveyance and/or patent has been issued pursuant to the Alaska Native Claims Settlement Act, the Secretary of the Interior and this Board lose all authority and jurisdiction over those interests in land which have been conveyed.

Under 43 CFR Part 4, Subpart J, and 43 CFR 2650 appeals to the Secretary under ANCSA relating to land selection are to the Alaska Native Claims Appeal Board. In the absence of regulations establishing a procedure by which the Secretary will review easements reserved in conveyances as contemplated by 43 CFR 2650.4-7(c)(1) and Secretarial Order No. 2982, the Board is not precluded from exercising the Secretary's authority to review easement reservations when such review is requested through an appeal to the Board.

Appeal of Eklutna, Inc., 1 ANCAB 305 (Mar. 15, 1977)
84 I.D. 105

When an interim conveyance has been issued pursuant to ANCSA, the Secretary of the Interior and ANCAB lose all authority and jurisdiction over those interests in the land which have been conveyed, and the Secretary is without jurisdiction to reserve any easements not originally contained in the conveyance or to deprive the grantee of the interim conveyance of any interests conveyed therein.

For the purpose of determining jurisdiction, a patent issued by the State of Alaska on TA'd lands within an 11(a)(2) withdrawal, will be accorded the same dignity as a Federal patent, *i.e.*, the effect of the issuance of a patent to public lands by the United States, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to end all authority and jurisdiction in the Department of the Interior over the lands conveyed. Therefore the Board finds it lacks jurisdiction to decide the status of patents issued by the State of Alaska prior to ANCSA to third parties on TA'd lands, as the proper form for such an adjudication is in a judicial proceeding.

Although the validity of S.O. 2982 is being challenged on numerous grounds in pending litigation, the Board currently is bound by S.O. 2982, and insofar as it purports to limit and restrict the Board's jurisdictional authority, the Board's jurisdiction is so affected.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interests in the lands, including mineral leases.

All challenges to the validity of ANCSA are beyond the jurisdiction of an administrative adjudicative body organized to decide appeals under that statute.

Appeal of Terry E. Krize and J. Purolin, 2 ANCAB 247 (Dec. 28, 1977)
84 I.D. 1007

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Jurisdiction--Continued

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interests in the lands, including mineral leases.

All challenges to the validity of ANCSA are beyond the jurisdiction of an administrative adjudicative body organized to decide appeals under that statute.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interests in the lands, including mineral leases.

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antwell, 2 ANCAB 302 (Feb. 21, 1978)

After expiration of the period in which a decision finding a village eligible may be appealed, and the village has been certified as eligible for benefits under § 11 of ANCSA, the Board has no jurisdiction over an appeal challenging the eligibility of the village and will dismiss such an appeal.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 363 (Mar. 31, 1978)

Appeal of Irving C. Wedmore, 3 ANCAB 252 (May 16, 1979)

Until such time as the Village Corporation makes a determination of the appellants' rights claimed under sec. 14(c) of ANCSA, this Board lacks jurisdiction to hear appellants' appeal concerning such rights.

Appeal of Kodiak Island Setnetters Ass'n, 3 ANCAB 1 (June 12, 1978) 85 I.D. 200

Appeal of Mark A. Wartes et al., 3 ANCAB 21 (June 21, 1978)

Appeal of Mr. & Mrs. G. Gregory Moo, 3 ANCAB 27 (June 26, 1978)

Continued--

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Jurisdiction--Continued

Appeal of Kodiak Island Borough, 3 ANCAB 65 (July 11, 1978)

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interest in the lands, including mineral leases.

All challenges to the validity of ANCSA are beyond the jurisdiction of an administrative adjudicative body organized to decide appeals under that statute.

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

The effect of the issuance of a patent to public lands by the United States, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to end all authority and jurisdiction of the Department of the Interior over the lands conveyed. The proper forum to further adjudicate the status of such an interest is in a judicial proceeding and the Board lacks jurisdiction to decide the issue.

Appeal of Choggiung, Ltd., 3 ANCAB 100 (Nov. 20, 1978)

Appeal of Alaska Railroad, 3 ANCAB 273 (June 7, 1979) 86 I.D. 357

Appeal of Alaska Railroad, 3 ANCAB 280 (June 8, 1979)

An appeal based on interests created by § 14(c) of ANCSA, filed prior to issuance of interim conveyance to the appropriate village corporation, is premature, and the Board lacks jurisdiction to hear such an appeal.

Appeal of James W. Lee, 3 ANCAB 334 (Aug. 31, 1979)

The effect of the issuance of a patent by the United States, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to end all authority and jurisdiction of the Department of the Interior over the lands conveyed. The proper forum to further adjudicate the status of an alleged interest in the conveyed lands in someone other than the patentee is in a judicial proceeding, and the Board lacks jurisdiction to decide an appeal based on a claim to patented lands.

Appeal of the Alaska Railroad, 3 ANCAB 346 (Aug. 31, 1979)

The effect of the issuance of a patent to public lands by the United States, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to end all authority and jurisdiction of the Department of the Interior over the lands conveyed. The proper forum to further adjudicate the status of such an interest is in a judicial proceeding and the Board lacks jurisdiction to decide the issue.

Sec. 316 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 2770, 43 U.S.C. §§ 1701-1782 at 1746 (1976), was not intended to alter the long-established rule regarding the Department of the Interior's loss of jurisdiction to adjudicate interests in land following the issuance of patent for that land.

Appeal of the Alaska Railroad (On Reconsideration), 3 ANCAB 351 (Sept. 18, 1979) 86 I.D. 452

Appeal of Alaska Railroad (On Reconsideration), 3 ANCAB 377 (Sept. 21, 1979)

The effect of the issuance of a patent or interim conveyance by the United States, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to end all authority and jurisdiction of the Department of the Interior over the lands conveyed. The proper forum to further adjudicate the status of an alleged interest in the conveyed lands is in a judicial proceeding, and the Board lacks jurisdiction to decide an appeal based on a claim to conveyed lands.

Appeal of the Alaska Railroad, 3 ANCAB 365 (Sept. 19, 1979)

Appeal of the Alaska Railroad, 3 ANCAB 371 (Sept. 19, 1979)

Neither the Board nor the BLM is the appropriate forum in which to adjudicate the validity of third-party interests created by the State of Alaska.

Appeal of Ouzinkie Native Corp., 4 ANCAB 3 (Oct. 31, 1979) 86 I.D. 618

Appeal of William J. and Jean H. Schwaab, 4 ANCAB 17 (Oct. 31, 1979)

The Board lacks jurisdiction to adjudicate the validity of homestead entries; the Board, rather, adjudicates the effect of ANCSA on such entries.

Appeal of Carmel J. McIntyre, 4 ANCAB 24 (Nov. 30, 1979) 86 I.D. 663

Parties

Where the Board's appeal file discloses that persons who may have an interest in the land in dispute have not been named as adverse parties by the Bureau of Land Management and served with a copy of all documents relating to the appeal, the Board will designate such persons necessary parties on whom such service must be made and direct that such persons file an appearance and respond to the pleadings prior to adjudication of the appeal.

Absent another party aligned in interest with the appellant, or other reasons justifying the continuance of the appeal, an appeal will be dismissed when the sole appellant before the Board withdraws its appeal.

Appeal of State of Alaska, 1 ANCAB 51 (June 18, 1976)

Under regulations contained in 43 CFR 4.902, a Regional Corporation has a right of appeal.

Where a person is designated a necessary party by Order of the Board and is given actual notice of administrative proceedings which may affect a claimed property interest, and such person fails to appeal and assert any claim, such person may be dismissed as a party and the Board may adjudicate the property interest of other parties without regard to any interest which may be claimed by the party who fails to appear.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Where multiple appellants are listed on an Appendix to the appellants' Statement of Facts and Reasons, and such Appendix incorporates by reference a list of additional individuals (listed as simultaneous drawing drawees by land description, drawing card number, name and address), the incorporation by reference of the second list is sufficient to identify the individuals and interests designated thereon as appellants.

Appeal of Gayle D. Fogelson, 2 ANCAB 316 (Mar. 2, 1976)

Reconsideration

Where regulations provide that a party may promptly request the reconsideration of a decision but provides no time limit for the filing of such a request, a request for reconsideration filed within a reasonable time under the circumstances of the appeal will be considered timely.

A Petition for Reconsideration will be granted when in its discretion, the Alaska Native Claims Appeal Board finds that extraordinary circumstances do exist that had not been considered by the Board in rendering its decision.

Appeal of Eklutna, Inc., 2 ANCAB 214 (Dec. 19, 1977) 84 I.D. 982

Where a person received no notice of a decision affecting his open-to-entry lease, and where the Secretary has reconsidered and reversed the Board's ruling on valid existing rights in an appeal from that decision, the Board considers these circumstances extraordinary within the meaning of 43 CFR 4.21(c) and will reconsider its ruling.

Appeal of Raymond E. Miller, 3 ANCAB 238 (May 14, 1979) 86 I.D. 285

Where an appellant fails to appeal an administrative decision and, after 15 years, seeks reversal on reconsideration of that decision, and where reconsideration would prejudice third-party interests created in the interim, the Board will not reconsider such appeal.

Appeal of Carmel J. McIntyre, 4 ANCAB 24 (Nov. 30, 1979) 86 I.D. 663

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Res Judicata

A prior decision of the Department will not be overturned by this Board where the claimant has failed to prosecute an appeal from such decision and in essence acquiesced to the decision for a prolonged period of time.

Appeal of State of Alaska, 3 ANCAB 11 (June 20, 1978)
85 I.D. 219

The Board will not reverse a prior final decision of the Department where the appellant did not appeal such decision for 15 years, and now seeks reversal of such decision through a new administrative appeal. The principle of finality of administrative action bars consideration of such a new appeal when it involves the same claim of land and the same issues as were the subject of the prior appeal.

Appeal of Carmel J. McIntyre, 4 ANCAB 24 (Nov. 30, 1979)
86 I.D. 663

Settlement Approval

Where the Bureau of Land Management is a party to an appeal because a decision of the State Director has been appealed, and no other organizational unit of the Department of the Interior is a party, approval of any settlement agreement which may require future action or forbearance by the Department is a prerequisite to binding the Department, and is within the authority of the Board under regulations contained in 43 CFR 4.913(b).

An agreement in settlement of an appeal which requires the Bureau of Land Management to include specified provisions in Interim Conveyances to be issued in the future, but which does not require BLM to amend an Interim Conveyance that has already been issued by the addition of easements thereto, may be approved by the Board without consideration of BLM's authority to amend Interim Conveyances.

Appeal of State of Alaska, 1 ANCAB 51 (June 18, 1976)

43 CFR 4.913(b) provides:
"Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary or his delegate."

Absent another party aligned in interest with the appellant or other reason from the record file justifying the continuance of the appeal, the appeal will be dismissed pursuant to the terms of the settlement agreement to which appellant is party.

Appeal of Ukpeagvik Inupiat Corp., 1 ANCAB 185 (Nov. 1, 1976)

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing

The State of Alaska has standing to appeal a Decision of the Bureau of Land Management to the Alaska Native Claims Appeal Board as a party "who claims a property interest in land affected" by a Decision of the Bureau of Land Management, within the meaning of 43 CFR 4.902, when the BLM Decision vacates the tentative approval previously given to the State's selection and rejects the State's land selection application filed under the Alaska Statehood Act because of a conflict with the provisions of the Alaska Native Claims Settlement Act.

Appeal of the State of Alaska, 1 ANCAB 281 (Dec. 20, 1976)
83 I.D. 685

The Board, in its discretion, will not summarily dismiss an appeal for failure to file a Statement of Standing merely because a Statement of Standing was not separately filed or separately labeled, where the timely filed Statement of Reasons clearly discloses the claim of property interests required for standing to appeal by 43 CFR 4.902.

Where the State clearly has standing to appeal a decision, and its appeal is consolidated by the Board for adjudication with another appeal in which the State's standing to appeal is challenged, the State's standing to appeal in the consolidated matter will not be prejudiced.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

In view of Secretarial policy to expedite conveyances under ANCSA by rejecting pending noncompetitive oil and gas lease offers which conflict in whole or in part with such conveyances, and in view of the Secretary's conclusion that oil and gas lease offerors do not have a "property interest in land" sufficient to convey standing under 43 CFR 4.902, an appeal by an offeror from a BLM decision rejecting an offer for a noncompetitive oil and gas lease will be dismissed.

Appeal of E. H. Wargo, 2 ANCAB 98 (July 15, 1977)

Appeal of William G. Zaegel, 2 ANCAB 115 (July 15, 1977)

Appeal of Terry E. Brize and J. Burglin, 2 ANCAB 126 (Aug. 4, 1977)

Appeal of Clifford C. Burglin, 2 ANCAB 134 (Aug. 4, 1977)

Where, pursuant to Departmental regulations, a party must claim a property interest in land affected by a decision in order to have standing to appeal such a decision, and the Secretary has found as a matter of law that a noncompetitive oil and gas lease offeror has no property interest in his offer, the Board finds that offerors for noncompetitive oil and gas leases do not have standing under 43 CFR 4.902 to appeal a BLM decision to issue conveyance to a Native Corporation under ANCSA.

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

period in which Statements of Reasons and Standing may be filed.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Pursuant to regulations in 43 CFR Part 4, Subpart J, 4.902, a party may bring an appeal before the Alaska Native Claims Appeal Board if it (1) "claims a property interest in land" that is (2) "affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed," or is an agency of the Federal Government, or in cases involving land selection is a Regional Corporation.

The mere assertion by an appellant that he "frequently uses" land which might be conveyed to a Village Corporation under the Alaska Native Claims Settlement Act, is insufficient by itself to constitute a claim of "property interest in land affected by a determination appealable to the Alaska Native Claims Appeal Board" as is required by 43 CFR Part 4, Subpart J, 4.902, to bring an appeal before this Board.

An assertion by an appellant that a Village Corporation might alter its selection pattern if an appeal of an entitlement determination is successful, is insufficient to show that an appellant's property interest in land is affected by a determination appealable to this Board as required by 43 CFR Part 4, Subpart J, 4.902, when the Village Corporation would be entitled to select the disputed land regardless of the outcome of an appeal from the entitlement determination.

Appeal of Omar Stratman et al., 2 ANCAB 329 (Mar. 23, 1978)

The appropriate test for determining whether or not a party has standing to bring an appeal before the Alaska Native Claims Appeal Board is not whether such party is an "aggrieved party" but whether such party "claims a property interest in land affected by a determination from which an appeal to the ANCAB is allowed," or is an agency of the Federal Government, or in cases involving land selection is a Regional Corporation.

The mere assertion of recreational use of a bank of a river by an appellant or appellants does not by itself constitute a claim of "property interest" which is required by 43 CFR Part 4, Subpart J, 4.902, to bring an appeal before this Board.

Appeal of Sam E. McDowell, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of George C. Stek, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of David F. Botens, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of John P. Ellison, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Robert W. Ward, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Reino O. Huttunen, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Lew Erhart, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Alfred M. Noble, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of S. K. Eriksson, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Kenneth E. Chamberlain, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Walter Galetti, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Gesena M. Galetti, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of John W. Scott, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Dorothea Taylor, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of George Murphy, 2 ANCAB 350 (Mar. 28, 1978)

The mere allegation of ownership and use of State and Federal lands as members of the public does not constitute a claim of "property interest in land" as is required for standing by 43 CFR 4.902, and, therefore, the appellant lacks standing to bring an appeal before the Board.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 363 (Mar. 31, 1978)

Where, pursuant to Departmental regulations, a party must claim a property interest in land affected by a decision in order to have standing to appeal such a decision, and the Secretary has found as a matter of law that a noncompetitive oil and gas lease offeror has no property interest in his offer, the Board finds that offerors for noncompetitive oil and gas leases do not have standing under 43 CFR 4.902 to appeal a BLM decision to issue conveyance to a Native Corporation under ANCSA.

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

To have standing to bring an appeal before this Board, an appellant other than a regional corporation or an agency of the Federal Government, must make a claim of property interest in land affected by a determination appealable to this Board.

Appeal of Lois A. Mayer, 3 ANCAB 77 (Aug. 17, 1978)

Where the lands in which an appellant claims a property interest are not included in the decision to convey, and appellant fails to show any connection between such land and land interests which are conveyed pursuant to such a decision, the Board finds that appellant has failed to meet the requirement for standing set forth in 43 CFR 4.902 and the appeal must therefore be dismissed.

Appeal of Norrec, Inc., 3 ANCAB 89 (Oct. 24, 1978)

Where the State of Alaska has not selected lands within the lands in dispute in an appeal, the State cannot be found to claim a property interest in such lands, within the meaning of standing regulations in 43 CFR 4.902, by reason of a prior selection.

The test of standing to appeal under 43 CFR 4.902 is not whether a person is an "aggrieved party," but whether a person "claims a property interest in land affected by a determination from which an appeal to ANCAB is allowed."

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

While a "property interest" sufficient to confer standing under 43 CFR 4.902 need not be a vested interest, it may not be completely speculative.

Where the State's "interest" in a particular tract of land is based only on the possibility of a decision, at some future time, to select such land in preference to other land under the Statehood Act, the State's "interest" is too speculative to constitute a "property interest" under 43 CFR 4.902.

Appeal of State of Alaska, 3 ANCAB 196 (Apr. 11, 1979) 86 I.D. 225

Statement of Facts for Standing

Pursuant to 43 CFR Subpart J, 4.903(b)(2), within 30 days after filing of the Notice of Appeal, the appellant shall file with the Board a statement of facts upon which the appellant relies for standing.

Appeal of Cook Inlet Region, Inc., 2 ANCAB 166 (Nov. 16, 1977)

Statement of Reasons

Pursuant to 43 CFR Subpart J, 4.903(b)(1), if a Notice of Appeal does not include a Statement of Reasons for the appeal, such a statement shall be filed with the Board within 30 days after the Notice of Appeal was filed.

Appeal of Cook Inlet Region, Inc., 2 ANCAB 166 (Nov. 16, 1977)

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which Statements of Reasons and Standing may be filed.

Appeal of Terry R. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Appeals of Ethel D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antwell, 2 ANCAB 302 (Feb. 21, 1978)

Summary Dismissal

Absent another party aligned in interest with the appellant(s) or other reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant(s) before the Board withdraw(s) the appeal.

Appeal of State of Alaska, 1 ANCAB 32 (May 12, 1976)

Appeal of Doyon, Ltd., 1 ANCAB 98 (July 9, 1976)

Appeal of Doyon, Ltd., 1 ANCAB 101 (July 9, 1976)

Appeal of State of Alaska, Department of Fish and Game, 1 ANCAB 179 (Oct. 21, 1976)

Appeal of the State of Alaska, Department of Fish and Game, 1 ANCAB 182 (Oct. 21, 1976)

Continued--

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Summary Dismissal--Continued

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 1 ANCAB 317 (Apr. 8, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 1 ANCAB 322 (Apr. 8, 1977)

Appeal of State of Alaska, 1 ANCAB 327 (Apr. 15, 1977)

Appeal of NANA Regional Corp., Inc., 1 ANCAB 334 (Apr. 15, 1977)

Appeal of U.S. Fish and Wildlife Service, 1 ANCAB 341 (Apr. 28, 1977)

Appeal of State of Alaska, 1 ANCAB 345 (May 4, 1977)

Appeal of State of Alaska, 1 ANCAB 348 (May 4, 1977)

Appeal of State of Alaska, 1 ANCAB 351 (May 4, 1977)

Appeal of State of Alaska, 1 ANCAB 354 (May 4, 1977)

Appeal of Kodiak Island Borough and the City of Kodiak, 2 ANCAB 123 (July 25, 1977)

Appeal of Choggiung, Ltd., 2 ANCAB 181 (Dec. 16, 1977)

Appeal of Natives of Akhiok, Inc., 2 ANCAB 275 (Jan. 27, 1978)

An appeal will be summarily dismissed for lack of diligent prosecution when the appellant fails to file with the Board and to serve upon all persons required to be served, copies of the Notice of Appeal, Statement of Reasons, and other documents required to be filed with the Board in support of the appeal.

Appeal of Natalie Simeonoff, 1 ANCAB 116 (Aug. 10, 1976)

An appeal will be dismissed for lack of diligent prosecution when the appellant fails to comply with an order of the Board requiring a showing of cause or the filing of other documents.

Appeal of Leonard A. Sivertsen, 1 ANCAB 294 (Jan. 14, 1977)

The Board, in its discretion, will not summarily dismiss an appeal for failure to file a Statement of Standing merely because a Statement of Standing was not separately filed or separately labeled, where the timely filed Statement of Reasons clearly discloses the claim of property interests required for standing to appeal by 43 CFR 4.902.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Pursuant to 43 CFR Subpart J, 4.905, an appeal may, in the discretion of the Board, be dismissed for failure to file with the Board a Statement of Reasons and Statement of Standing as required by 43 CFR Subpart J, 4.903.

Appeal of Cook Inlet Region, Inc., 2 ANCAB 166 (Nov. 16, 1977)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board withdraws the appeal.

Appeal of Derrell B. Short, 2 ANCAB 298 (Feb.13, 1978)

Appeal of State of Alaska, Department of Fish and Game, 2 ANCAB 325 (Mar. 9, 1978)

Appeal of Kodiak Island Borough, 3 ANCAB 74 (Aug. 10, 1978)

Appeal of Kenneth Arndt, 3 ANCAB 127 (Jan. 15, 1979)

Appeal of Al L. Weathers, 3 ANCAB 165 (Feb. 22, 1979)

Appeal of Savoonga Native Corp. and Gambell Native Corp., 3 ANCAB 190 (Apr. 6, 1979)

Appeal of Alaska Packers Ass'n, Inc., 4 ANCAB 1 (Oct. 17, 1979)

An appeal will be dismissed for lack of diligent prosecution when the appellant fails to comply with an Order of the Board requiring a showing of cause or the filing of other documents.

Appeal of William E. Torgramsen, 2 ANCAB 371 (May 9, 1978)

Appeal of Jack E. Alexander, 2 ANCAB 376 (May 9, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the remaining appellant before the Board withdraws its appeal.

Appeal of City of Kodiak and In the Matter of Port Lions Native Corp., 3 ANCAB 85 (Sept. 14, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board requests that the appeal be dismissed.

Appeal of J. Bruce Crow, 3 ANCAB 96 (Nov. 20, 1978)

Appeal of Doyon, Ltd., 3 ANCAB 105 (Dec. 11, 1978)

An appeal will be summarily dismissed when, in response to a motion to show cause, the appellant states in writing it has no objection to the dismissal.

Appeal of Kodiak Island Borough, 3 ANCAB 108 (Dec. 18, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant and all parties of record before the Board stipulate to a dismissal of the appeal.

Appeal of State of Alaska, Dept. of Transportation and Public Facilities, 3 ANCAB 124 (Jan. 5, 1979)

Appeal of the State of Alaska, 4 ANCAB 108 (Dec. 19, 1979)

An issue in an appeal will be dismissed for lack of diligent prosecution when a party fails to respond to an Order of this Board requiring a showing of cause why an issue should not be dismissed.

Appeal of State of Alaska, 3 ANCAB 129 (Jan. 19, 1979)
86 I.D. 45

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board files a voluntary dismissal.

Appeal of Kenai Peninsula Borough, 3 ANCAB 258 (May 18, 1979)

Appeal of Pacific Pearl Seafoods, 3 ANCAB 383 (Sept. 25, 1979)

This Board does not have jurisdiction to adjudicate the Secretary's authority to withdraw lands for possible selection by a Native corporation pursuant to § 14(h)(8) of ANCSA.

Appeal of the State of Alaska, 3 ANCAB 285 (June 11, 1979)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the parties stipulate to a dismissal of the appeal.

Appeal of State of Alaska, Department of Transportation, 3 ANCAB 291 (June 29, 1979)

Appeal of the State of Alaska, 3 ANCAB 294 (July 10, 1979)

An appeal will be summarily dismissed when in response to a motion to show cause, the appellant states in writing it has no objections to the dismissal.

Appeal of Lone Star Industries, Inc., 3 ANCAB 321 (Aug. 17, 1979)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a motion to dismiss its appeal.

Appeal of Doyon, Ltd., 4 ANCAB 110 (Dec. 19, 1979)

Waiver

Where Departmental regulations provide for the elapse of a 30-day appeal period before a decision to convey becomes final, waiver by one of a number of parties who might appeal does not render BLM's decision final so as to permit conveyance before elapse of the 30-day appeal period.

Proper filing of a Notice of Appeal during the 30-day appeal period will be treated as a revocation of a prior waiver of appeal rights.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Dismissal

Generally

An appeal will be dismissed for lack of diligent prosecution when the appellant fails to file with the Board and to serve upon all parties required to be served a Statement of Facts for Standing as required by 43 CFR 4.903, or any other document which discloses a claim of property interest in land required for standing to appeal by 43 CFR 4.902, and further fails to comply with an Order of the Board requiring a showing of cause.

Appeal of Omar Stratman et al., 2 ANCAB 269 (Jan. 26, 1978)

Appeal of Omar Stratman et al., 2 ANCAB 272 (Jan. 26, 1978)

When a special use permit states that it expires on a specified date, the Board is bound by that language and will dismiss the permit holder from the appeal on the grounds that the permit holder no longer has a property interest affected after the expiration date of the permit.

When a person is made a necessary party to an appeal by the Board, is served with the Board's Order naming him as a necessary party, and subsequently neither files an appearance nor files an answer or reply within the time allotted by the Board, such person will be dismissed as a party to this appeal.

Appeal of Yak-Tat Kwaan, Inc., 3 ANCAB 182 (Mar. 20, 1979)

CONVEYANCES

Generally

For the purpose of determining whether or not the Secretary of the Interior retains jurisdiction to review easement interests reserved to the Federal Government, interim conveyance and patent, pursuant to 43 CFR 2650.0-5(h) and (i), are documents of equal significance in the granting of title under the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. IV, 1974), *as amended*, 89 Stat. 1145 (1976).

When an interim conveyance and/or patent has been issued pursuant to the Alaska Native Claims Settlement Act, the Secretary of the Interior and this Board lose all authority and jurisdiction over those interests in land which have been conveyed.

Pursuant to 43 CFR 2650.4-7(c)(1) and Secretarial Order No. 2982, the Secretary of the Interior does have jurisdiction to review those easement interests reserved to the Federal Government in an interim conveyance or patent issued under the Alaska Native Claims Settlement Act.

When an interim conveyance or patent has issued, the Secretary of the Interior is without jurisdiction to reserve any easements not originally contained in the conveyance, or to deprive the grantee of the interim conveyance or patent of any interest conveyed therein.

Appeal of Eklutna, Inc., 1 ANCAB 305 (Mar. 15, 1977)
84 I.D. 105

CONVEYANCES--Continued

Generally--Continued

For the purpose of determining whether or not the Secretary of the Interior retains jurisdiction to review easement interests reserved to the Federal Government, interim conveyance and patent are documents of equal significance in the granting of title under ANCSA.

When an interim conveyance has been issued pursuant to ANCSA, the Secretary of the Interior and ANCAB lose all authority and jurisdiction over those interests in the land which have been conveyed, and the Secretary is without jurisdiction to reserve any easements not originally contained in the conveyance or to deprive the grantee of the interim conveyance of any interests conveyed therein.

The Secretary retains jurisdiction pursuant to 43 CFR 2650.4-7(c)(1) and S.O. 2982, to review easements interests reserved to the Federal Government in an interim conveyance; and in the absence of regulations establishing a procedure for such review, the Board is not precluded from exercising the Secretary's authority to review easement reservations when such review is requested through appeal to the Board.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

In view of Secretarial policy to expedite conveyances under ANCSA by rejecting pending noncompetitive oil and gas lease offers which conflict in whole or in part with such conveyances, and in view of the Secretary's conclusion that oil and gas lease offerors do not have a "property interest in land" sufficient to convey standing under 43 CFR 4.902, an appeal by an offeror from a BLM decision rejecting an offer for a noncompetitive oil and gas lease will be dismissed.

Where BLM, in accord with Secretarial policy, rejects a noncompetitive oil and gas lease offer because of a conflict with a conveyance under ANCSA, such rejection by BLM constitutes final agency action from which no administrative appeal will lie by the offeror to the Board or to the Interior Board of Land Appeals.

Appeal of E. B. Wargo, 2 ANCAB 98 (July 15, 1977)

Appeal of William G. Zaegel, 2 ANCAB 115 (July 15, 1977)

Appeal of Terry B. Brize and J. Burglin, 2 ANCAB 126 (Aug. 4, 1977)

Appeal of Clifford C. Burglin, 2 ANCAB 134 (Aug. 4, 1977)

Where, pursuant to Departmental regulations, a party must claim a property interest in land affected by a decision in order to have standing to appeal such a decision, and the Secretary has found as a matter of law that a noncompetitive oil and gas lease offeror has no property interest in his offer, the Board finds that offerors for noncompetitive oil and gas leases do not have standing under 43 CFR 4.902 to appeal a BLM decision to issue conveyance to a Native Corporation under ANCSA.

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interests in the lands, including mineral leases.

Sec. 22(i) of ANCSA, 43 U.S.C. § 1621(i) (1976), does not authorize the issuance of mineral leases on lands to be conveyed under ANCSA.

The Board vacates its previous ruling that BLM's rejection of a noncompetitive oil and gas lease offer, because of conflict with an ANCSA conveyance, constitutes final agency action from which no appeal will lie.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

Where, pursuant to Departmental regulations, a party must claim a property interest in land affected by a decision in order to have standing to appeal such a decision, and the Secretary has found as a matter of law that a noncompetitive oil and gas lease offeror has no property interest in his offer, the Board finds that an offeror for a noncompetitive oil and gas lease does not have standing under 43 CFR 4.902 to appeal a BLM decision to reject his lease offer, or to issue a conveyance to a Native Corporation under ANCSA.

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interests in the lands, including mineral leases.

Sec. 22(i) of ANCSA, 43 U.S.C. § 1621(i) (Supp. IV 1974), does not authorize the issuance of mineral leases on lands to be conveyed under ANCSA.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antwell, 2 ANCAB 302 (Feb. 21, 1978)

Valid existing rights held by third parties that lead to acquisition of title, must be identified in the conveyancing document and the land covered thereby excluded from the conveyance to the selecting Native corporation.

Appeal of Raymond A. Kreig, 3 ANCAB 168 (Mar. 9, 1979) 86 I.D. 189

"Public Lands." Land within an interim conveyance to a Native Corporation is no longer "public land" under the Federal Land Policy and Management Act nor subject to Bureau of Land Management jurisdiction to issue rights-of-way under that Act.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

Where conditions of exploration and settlement explain the infrequency or limited nature of actual use of a water body for commercial purposes, evidence of private use may be considered to demonstrate susceptibility of commercial use for purposes of determining navigability.

Historic use of a water body by trappers may be properly considered in determining whether a water body has been used or is susceptible of use as a highway of commerce for purposes of navigability.

Where pole boats, tunnel boats, and outboard river boats constituted the customary modes of trade and travel on a river and its tributaries, the use of these watercraft may be appropriately considered in determining whether rivers in the area were used or are susceptible of being used as highways of commerce.

While recreational use, of itself, may not suffice to meet the susceptibility test for purposes of navigation for title, present use for recreation purposes may be properly considered, as a corroborating factor, in determining susceptibility for use as a highway of commerce.

Physical impediments to navigation, such as gravel bars, riffles, or occasional log jams, do not, in themselves, make a water body nonnavigable.

To be navigable, a river must be so situated and have such length and capacity as will enable it to accommodate the public generally as a means of transportation.

When the record shows that, historically, trapping was the primary reason for trade and travel in an area, and where the water body in question was commonly utilized by trappers as a route of trade and travel in boats of the period customarily used to freight supplies, such use will result in a finding that the water body has been used and is susceptible for use as a highway of commerce.

The presence of physical impediments on a water body will not result in a finding of nonnavigability when the record shows that the water body has been used and is capable of use as a highway of commerce.

The legal concept of navigability embraces both public and private interests. It is not to be determined by a formula which fits every type of stream under all circumstances and at all times.

Appeal of Doyon, Ltd., 4 ANCAB 50 (Dec. 14, 1979) 86 I.D. 692

Reconveyances

Municipal corporations, organized to provide necessary Government services, are beneficiaries of sec. 14(c) of ANCSA in that they receive title to lands they use and occupy, and to additional lands for community expansion.

The Municipality's interest in lands improved for recognized public purposes is protected by sec. 14(c)(3) of ANCSA because the Municipality occupies the same position with regard to Eklutna as the local Government entities envisioned by Congress in enacting such reconveyance provision and the disputed land, while outside Eklutna Village, is within the village withdrawal area and has been improved for a public purpose.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

Until a village corporation makes its determination of an appellant's rights claimed under § 14(c) of ANCSA (85 Stat. 688, 703, 43 U.S.C. §§ 1601, 1613(c) (Supp. I 1977)), there is no way to determine if a dispute exists

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

CONVEYANCES--Continued

Reconveyances--Continued

between a person claiming under § 14(c) and the village corporation.

An appeal based on interests created by § 14(c) of ANCSA, filed prior to issuance of interim conveyance to the appropriate village corporation, is premature, and the Board lacks jurisdiction to hear such an appeal.

Interim conveyance and patent are documents of equal significance in the granting of title under ANCSA, and when interim conveyance has been issued, the Secretary and this Board lose jurisdiction over those interests in land which has been conveyed.

There is no administrative appeal process available to claimants under § 14(c) of ANCSA, and such claims must be brought in a judicial forum.

A reservation in a decision to convey, stating that conveyance to the village corporation is subject to the requirements of § 14(c) of ANCSA, protects rights in use and occupancy of the land, if any, claimed by the appellant under § 14(c), until the village corporation makes a determination as to the appellant's rights under § 14(c).

Appeal of James W. Lee, 3 ANCAB 334 (Aug. 31, 1979)

The appellant's possible rights to a reconveyance under § 14(c)(1) of ANCSA are not decided by the Board or affected by this decision.

Appeal of Carmel J. McIntyre, 4 ANCAB 24 (Nov. 30, 1979) 86 I.D. 663

Valid Existing Rights

All lands leased prior to Dec. 18, 1971, pursuant to open-to-entry leases which are valid on their face must be excluded from conveyances to Native corporations.

The date upon which parties to an open-to-entry lease acknowledge their signing of the lease does not effect the facial validity of the lease instrument, even though the acknowledgment date is subsequent to the effective date of ANCSA.

Appeal of Ouzinkie Native Corp., 4 ANCAB 3 (Oct. 31, 1979) 86 I.D. 618

All lands leased prior to Dec. 18, 1971, pursuant to open-to-entry leases which are valid on their face must be excluded from conveyances to Native corporations.

Appeal of William J. and Jean H. Schwaab, 4 ANCAB 17 (Oct. 31, 1979)

DEFINITIONS

Generally

"Public lands" are defined in sec. 3(e) of the Alaska Native Claims Settlement Act, as follows: "'Public lands' means all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation, and (2) land selections of the State of Alaska which have been patented or tentatively approved under sec. 6(g) of the Alaska Statehood Act, *as amended* (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to Jan. 17, 1969." The "except" clause contained in the definition of public lands in sec. 3(e) of ANCSA must be read as an expression of Congressional intent not to include particular lands rather than as an "exception" from lands included in the general definition of public lands.

The definition of public lands in sec. 3(e) cannot be interpreted to mean that all classes of State land in Alaska are *necessarily* "Federal lands or interests therein" unless such classes of lands are specifically excepted within the definition itself.

Appeal of Seldovia Native Ass'n, Inc., 1 ANCAB 65 (July 1, 1976) 83 I.D. 461

Lands on which the United States has issued patent either to the State or to a private individual are not within the definition of "public lands" in sec. 3(e) of ANCSA, were not withdrawn by sec. 11 of ANCSA, and therefore are not available for selection under ANCSA.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Land Selections

Lands conveyed to private parties by quitclaim deeds issued by the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, *as amended*, 40 U.S.C. § 471 *et seq*. (1970), have ceased to be "Federal lands and interests therein;" are not within the definition of "public lands" in sec. 3(e) of ANCSA; and are, therefore, not available for selection.

Appeal of Ounalashka Corp., 1 ANCAB 104 (July 13, 1976) 83 I.D. 475

Public Lands

Lands withdrawn pursuant to ANCSA are held for the benefit of Indians, Aleuts, and Eskimos, and thus are not "public lands" within the scope of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701-1782 (1976). 43 U.S.C. § 1702(e) (1976).

Appeal of Alaska Railroad, 3 ANCAB 273 (June 7, 1979) 86 I.D. 397

On reconsideration, the Board vacates its prior holdings that lands withdrawn under the Alaska Native Claims Settlement Act, 85 Stat. 688, *as amended*, 43 U.S.C. §§ 1601-1628 (1976 and Supp. I 1977), are lands held for the benefit of Indians, Aleuts and Eskimos and thus are not "public lands" within the scope of FLPMA, *supra*, and that FLPMA does not apply to such lands.

Appeal of the Alaska Railroad (On Reconsideration), 3 ANCAB 351 (Sept. 18, 1979) 86 I.D. 452

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

DISENROLLMENT

Computation of Time for Filing and Service

Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served or the day of any other event after which the designated period of time begins to run is not to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day.

Henry Sam Littlefield, Jr., 7 IBIA 128 (Mar. 30, 1979)
86 I.D. 217

EASEMENTS

Generally

Prior to the conveyance of any land pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 (1970)) (ANCSA) the Secretary must make a determination of which public easements are necessary and the Secretary must reserve those easements in the conveyance.

The Secretary has authority to reserve public easements in conveyances under ANCSA (43 U.S.C. § 1601 (1970)) other than those easements identified and recommended by the Joint Federal State Land Use Planning Commission.

The authority of the Secretary to reserve easements in conveyances under ANCSA is not limited to those public easements specifically listed in sec. 17(b)(1) of that Act.

The Secretary is not limited to reservation of easements in conveyances under ANCSA which cross the patented lands from one boundary to another. The easements may be for uses within the patented lands.

Easement Reservations in Conveyances to Alaska Native Corporations under ANCSA, M-36880 (July 8, 1975)
82 I.D. 325

Review

For the purpose of determining whether or not the Secretary of the Interior retains jurisdiction to review easement interests reserved to the Federal Government, interim conveyance and patent, pursuant to 43 CFR 2650.0-5(h) and (i), are documents of equal significance in the granting of title under the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. IV, 1974), *as amended*, 89 Stat. 1145 (1976).

Pursuant to 43 CFR 2650.4-7(c)(1) and Secretarial Order No. 2982, the Secretary of the Interior does have jurisdiction to review those easement interests reserved to the Federal Government in an interim conveyance or patent issued under the Alaska Native Claims Settlement Act.

Under 43 CFR Part 4, Subpart J, and 43 CFR 2650 appeals to the Secretary under ANCSA relating to land selection are to the Alaska Native Claims Appeal Board. In the absence of regulations establishing a procedure by which the Secretary will review easements reserved in conveyances as contemplated by 43 CFR 2650.4-7(c)(1) and Secretarial Order No. 2982, the Board is not precluded from exercising the Secretary's authority to review easement reservations when such review is requested through an appeal to the Board.

When an interim conveyance or patent has issued, the Secretary of the Interior is without jurisdiction to reserve any easements not originally contained in the conveyance, or to deprive the grantee of the interim conveyance or patent of any interest conveyed therein.

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

EASEMENTS--Continued

Review--Continued

Appeal of Eklutna, Inc., 1 ANCAB 305 (Mar. 15, 1977)
84 I.D. 105

For the purpose of determining whether or not the Secretary of the Interior retains jurisdiction to review easement interests reserved to the Federal Government, interim conveyance and patent are documents of equal significance in the granting of title under ANCSA.

The Secretary retains jurisdiction pursuant to 43 CFR 2650.4-7(c)(1) and S.O. 2982, to review easement interests reserved to the Federal Government in an interim conveyance; and in the absence of regulations establishing a procedure for such review, the Board is not precluded from exercising the Secretary's authority to review easement reservations when such review is requested through appeal to the Board.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

ENROLLMENT

Metlakatla Natives

No person enrolled in the Metlakatla Indian Community of the Annette Islands Reserve as of Apr. 1, 1970, shall be eligible for enrollment under the Act.

Henry Sam Littlefield, Jr., 7 IBIA 128 (Mar. 30, 1979)
86 I.D. 217

The appearance of one's name on the Metlakatla Indian community rolls of the Annette Islands Reserve in 1976 in itself is not conclusive of membership status. However, that fact considered in conjunction with other evidence indicating active involvement and contact with the community over the years including the year 1970 does not constitute continuous absence from the community.

Absent active involvement and contact and continuous absence of 2 years prior to Apr. 1, 1970, by a minor born outside the Metlakatla community and having never resided therein constitutes forfeiture of membership in the community, derived solely through a parent member of that community.

Alaska Native Disenrollment Appeals of: James Edward Scott, Sr., and Robert Charles Scott, 7 IBIA 157 (June 21, 1979)
86 I.D. 333

INDIAN RESIDENCE ALLOTMENT

Once made, an election to apply under sec. 14(h)(5) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(5) (Supp. III 1973) in lieu of a Native allotment application, is irrevocable.

Dwight Tevuk (Deceased), 22 IBLA 296 (Nov. 3, 1975)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

INDIAN RESIDENCE ALLOTMENT--Continued

The filing of an option form by an Alaska Native to receive his "primary place of residence" pursuant to sec. 14(h)(5) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(5) (Supp. III, 1973), does not terminate a prior allotment application filed under the Native Allotment Act, 43 U.S.C. § 270-1 (1970). Allowance of an application under either act renders the applicant ineligible for allowance of the other application.

Pursuant to 43 CFR 2653.8-3, appeals from decisions made by the Bureau of Land Management on applications filed pursuant to sec. 14(h)(5) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(5) (Supp. III, 1973), "shall be made to the Alaska Native Claims Appeals Board."

Dwight Tevuk (Deceased) (On Reconsideration), 29 IBLA 160 (Mar. 9, 1977)

LAND SELECTIONS

Generally

Selection of lands by Native Village Corporations pursuant to provisions of sec. 12(a) of ANCSA is not permitted outside of lands withdrawn by provisions of sec. 11(a)(1) as they relate to the location of the selecting village.

Failing to select land available within its sec. 11(a)(1) withdrawal, a Native Village Corporation cannot by giving consent and waiver to another Native Village Corporation make said lands available for selection under provision of sec. 12(a) of ANCSA.

Appeal of English Bay Corp., 1 ANCAB 35 (June 4, 1976)
83 I.D. 454

Where BLM's determination that lands are "property" not suitable for return to the public domain pursuant to the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 472(d) (1970), is not challenged, and the Administrator of the General Services Administration concurs, such determination and concurrence transfer the land from the administrative jurisdiction of the Department of the Interior to that of GSA.

Appeal of Ounalashka Corp., 1 ANCAB 104 (July 13, 1976)
83 I.D. 475

Where an unlisted Native village qualified under sec. 11(b)(3) of ANCSA is subsequently annexed by a first class or home-rule city, which is not a Native village, such village does not by reason of such annexation become one and the same as the city so as to enable selection of land under 43 CFR 2650.6(a).

Provision of sec. 12(a)(2) of ANCSA and regulations in 43 CFR 2651.4(b) requiring selections to be "contiguous and in reasonably compact tracts," is limited to lands that are otherwise available for selection under ANCSA and has no application so as to make available lands which are prohibited from being selected under provisions of sec. 22(*l*) of ANCSA.

Appeal of Eyak Corp., 1 ANCAB 132 (Sept. 9, 1976)
83 I.D. 484

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

LAND SELECTIONS--Continued

Generally--Continued

A withdrawal of public lands for a utility and transportation corridor under sec. 17(c) of the Alaska Native Claims Settlement Act, subject to valid existing rights, precludes selection of those lands by a Native group under sec. 14(h) of the Alaska Native Claims Settlement Act.

Appeal of Wisenak, Inc., 1 ANCAB 157 (Sept. 15, 1976)
83 I.D. 496

The provisions of sec. 12(a)(2) of ANCSA and regulations in 43 CFR 2651.4 that lands selected--"be contiguous and in reasonably compact tracts"--are not inconsistent with a finding that townships are property withdrawn under secs. 11(a)(1)(B) or (C) though actual physical cornering is prevented due to a township-offset resulting from location of a "standard parallel."

Appeal of Eklutna, Inc., 1 ANCAB 165 (Sept. 28, 1976)
83 I.D. 500

Under 43 CFR, Part 4, 4.1(5) and Subpart J, the Alaska Native Claims Appeal Board has jurisdiction over an appeal by the State of Alaska from an adverse decision of the Bureau of Land Management on a land selection application pursuant to the Alaska Statehood Act when the BLM's adverse decision is based upon a construction of the provisions of the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. IV 1974), *as amended*, 89 Stat. 1145 (1976).

The State of Alaska has standing to appeal a Decision of the Bureau of Land Management to the Alaska Native Claims Appeal Board as a party "who claims a property interest in land affected" by a Decision of the Bureau of Land Management, within the meaning of 43 CFR 4.902, when the BLM Decision vacates the tentative approval previously given to the State's selection and rejects the State's land selection application filed under the Alaska Statehood Act because of a conflict with the provisions of the Alaska Native Claims Settlement Act.

The Decision of the Bureau of Land Management vacating the previously granted tentative approval and rejecting the land selection application of the State of Alaska must be vacated and remanded for further proceedings when it does not appear that the land selection application by the Native Corporation has been adjudicated.

Appeal of the State of Alaska, 1 ANCAB 281 (Dec. 20, 1976)
83 I.D. 685

As of Dec. 18, 1975, lands withdrawn under sec. 11(a)(1) or sec. 11(a)(3) and not selected under secs. 12 or 19 of the Act, became lands outside the areas withdrawn by sec. 11 and became available for selection as a primary place of residence under sec. 14(h)(5).

An applicant who filed an application for a primary place of residence within the time limits set forth by sec. 14(h)(5) and 43 CFR 2653.8 on land which was withdrawn by sec. 11(a)(1) or sec. 11(a)(3) as of the date of filing, shall not have his application rejected pursuant to 43 CFR 2091.1 as a premature filing when Departmental regulations specifically permit the selection of formerly withdrawn land after Dec. 18, 1975, but do not permit a primary place of residence applicant to refile his application.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977)
84 I.D. 891

LAND SELECTIONS--Continued

Generally--Continued

Lands available for selection by a Regional Corporation under sec. 12 of ANCSA are limited to those lands withdrawn pursuant to sec. 11 of ANCSA.

Sec. 17(d)(2)(E) of ANCSA is not intended to provide lands for selection by a Regional Corporation in addition to lands withdrawn for selection pursuant to sec. 11 of ANCSA. Sec. 17(d)(2)(E), rather, is intended to postpone the time within which the Regional Corporations may receive patent to any lands under dual withdrawal until Congress has first acted upon the same or has failed to act within the 5-year period mandated by sec. 17(d)(2)(D).

Appeal of Doyon, Ltd., 2 ANCAB 336 (Mar. 22, 1978)

Conveyances

The interests described in sec. 14(g) of ANCSA are of a temporary or limited nature, in contrast to those interests derived from laws leading to a grant of fee title such as the entries protected by sec. 22(b). Inclusion in Native conveyances of lands subject to such interests, under administrative arrangements outlined in sec. 14(g) is appropriate, because such temporary or limited interests are not incompatible with Native ownership of the fee.

Leases issued for the surface or minerals covered by a Native selection constitute a valid existing right protected by sec. 14(g) of ANCSA and any conveyance to a Native Corporation of lands on which such a lease has issued must be subject to the leasehold interest.

State-issued permits and contracts for resource uses issued to third parties before Dec. 18, 1971, are protected as valid existing rights under sec. 14(g) of ANCSA, and any conveyance to a Native Corporation of lands on which such permits or contracts have been issued must be subject to such interests.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Easements

Generally

Where the Bureau of Land Management has developed new procedures for the reservation and identification of easements subsequent to issuance of a Decision to Convey, the Board will remand the Decision to Convey to the Bureau of Land Management for the limited purpose of identifying the easements reserved in the Decision to Convey under appeal according to the uniform easement identification system currently being followed.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Description

Description of easements solely by reference to a BLM or State Division of Lands case file number is not sufficient to meet the requirements of sec. 17(b) of ANCSA, regulations promulgated thereunder, and Secretarial Order No. 2982.

Decisions to convey and interim conveyances should, as a minimum state the use for which each easement is reserved, state the width of each easement, state at least the sections through which an easement passes or if a site easement, the section or sections in which the easement is located; alternatively, the easement could be located by incorporating in the conveyance document a map depicting the easement.

LAND SELECTIONS--Continued

Easements--Continued

Description--Continued

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Entrymen

Sec. 22(b) is specific and unambiguous, reflecting the concern of Congress for a class of persons carefully described: *i.e.*, entrymen under the Federal public land laws governing homesteads, headquarters sites, trade and manufacturing sites, and small tract sites.

Sec. 22(b) of ANCSA is not applicable to, and does not protect, the Municipality because having an interest created by the State of Alaska under State law, it is not an entryman under Federal public land laws leading to acquisition of title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites.

ANCSA protects as "valid existing rights," those rights, whether derived from the State or Federal Government, which do not lead to a grant of fee title and which were created prior to enactment of ANCSA. Rights leading to a fee, which had vested prior to enactment, would not be subject to Congressional disposal and would be excluded from withdrawals for Native selection. Rights of entrymen leading to grant of a fee under Federal public land laws, which had not vested prior to enactment of ANCSA, are treated by ANCSA as if vesting had occurred and are not categorized as "valid existing rights."

The interests described in sec. 14(g) of ANCSA are of a temporary or limited nature, in contrast to those derived from laws leading to a grant of fee title such as the entries protected in sec. 22(b), and, therefore, are not incompatible with Native fee ownership of the land.

The Municipality is not protected under sec. 14(g) of ANCSA because its interest leads to grant of fee title by the State, if the State were able to issue patent; such an interest is incompatible with conveyance to a Native grantee as contemplated by sec. 14(g).

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

ANCSA protects, as "valid existing right," those rights, whether derived from the State or Federal Government, which do not lead to a grant of fee title and which were created prior to enactment of ANCSA. Rights leading to a fee, which had vested prior to enactment, would not be subject to Congressional disposal and would be excluded from withdrawals for Native selection. Rights of entrymen leading to a grant in fee under Federal public land laws, which had not vested prior to ANCSA, are treated by ANCSA as if vesting had occurred and are not categorized as "valid existing rights."

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Primary Place of Residence

In the absence of evidence that a primary place of business of a Native applicant would also qualify as a primary place of residence within the meaning of sec. 14(h) of ANCSA and the regulations in 43 CFR 2650, *as amended*, 41 FR 14734 (Apr. 7, 1976), neither the Bureau of Land Management nor this Board have jurisdiction to adjudicate the merits of a primary place of business application under sec. 14(c)(1) of ANCSA.

Appeal of Natalie Simeonoff, 1 ANCAB 116 (Aug. 10, 1976)

Proof

The data upon which BLM has relied as the basis for compiling a protraction diagram will be deemed sufficient to determine boundaries of lands affected by the provisions of sec. 22(l) of ANCSA unless controverted by specific showing of error.

Appeal of Eyak Corp., 1 ANCAB 132 (Sept. 9, 1976)
83 I.D. 484

Regional Corporations

A land selection application filed pursuant to secs. 12(b)(1), 12(b)(3), and 14(h)(1) of the Alaska Native Claims Settlement Act must conform to the regulations promulgated under the statute as enacted at the time the application is filed unless a later amendment to the statute provides otherwise.

Neither P.L. 94-204 (89 Stat. 1145, 43 U.S.C. § 1611 (Supp. IV 1974)), nor the Terms & Conditions incorporated in the amendment, contain language which conflicts with, excludes, or preempts ANCSA regulations 43 CFR 2650.2(e)(1) and (2) requiring a legal description of lands applied for pursuant to ANCSA, or 43 CFR 2653.5(f) requiring a description and location of historical sites selected pursuant to sec. 14(h)(1) of ANCSA.

A land selection application filed pursuant to secs. 12(a)(1), 12(a)(3), and 14(h)(1) of ANCSA containing only a metes and bounds description of the exterior boundaries of a region, does not meet the requirements for a legal description of 43 CFR 2650.2(e)(1) and (2) and 2653.5(f).

A land selection determined finally to be invalid pursuant to ANCSA or its implementing regulations is not protected within the meaning of sec. 22(h)(1) after the date of terminations.

Appeal of Cook Inlet Region, Inc., 3 ANCAB 111 (Dec. 27, 1978)
85 I.D. 462

Section 14(c)

The reservation in the decision to convey, stating that conveyance to the Village Corporation is subject to the requirements of sec. 14(c) of ANCSA, protects rights in use and occupancy of the land, if any, claimed by appellants under sec. 14(c), until the date of the patent of the land to the Village Corporation, at which time the village must make a determination as to these appellants' rights under sec. 14(c).

Until such time as the Village Corporation makes a determination of the appellants' rights claimed under sec. 14(c) of ANCSA, this Board lacks jurisdiction to hear appellants' appeal concerning such rights.

Appeal of Kodiak Island Setnetters Ass'n, 3 ANCAB 1 (June 12, 1978)
85 I.D. 200

Appeal of Mark A. Wartes et al., 3 ANCAB 21 (June 21, 1978)

Appeal of Mr. & Mrs. G. Gregory Moo, 3 ANCAB 27 (June 26, 1978)

The reservation in the decision to convey, stating that conveyance to the Village Corporation is subject to the requirements of sec. 14(c) of ANCSA, protects whatever rights appellant may have pursuant to sec. 14(c), until the date of the patent of the land to the Village Corporation, at which time the village must make a determination as to the appellant's rights under sec. 14(c).

Until such time as the Village Corporation makes a determination of the appellant's rights claimed under sec. 14(c) of ANCSA, this Board lacks jurisdiction to hear appellants' appeal concerning such rights.

Appeal of Kodiak Island Borough, 3 ANCAB 65 (July 11, 1978)

State Interests

Generally

The Municipality, as grantee of the State, could not acquire greater interests than its grantor and could not, prior to ANCSA, acquire equitable title; accordingly, any protection or priority afforded the Municipality must be statutory, conferred by ANCSA.

The Municipality is organized and may be dissolved under State law and presently has the power to exercise governmental functions including the acquisition, management, and disposal of land independent of control by the State. Until revoked or modified by constitutional or legislative amendment, such powers remain in force and render the Municipality an entity separate from the State for purposes of holding third-party interests under ANCSA.

Because the State was not prohibited by sec. 6(g) of the Statehood Act from granting tentatively approved lands to local governments, and neither the Statehood Act nor selection procedures in A.S. 29.18.190 require payment of consideration, the Municipality's interest in the disputed lands does not fail for lack of consideration.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976)
83 I.D. 619

Where the State had not acquired equitable title to tentatively approved land selections within village withdrawal areas prior to ANCSA, a grantee of the State could not acquire a greater interest than its grantor and could not, prior to ANCSA, acquire equitable title sufficient to deprive Congress of power to dispose of the land in settlement of Native claims. Accordingly, any protection or priority afforded to third-party interests in the disputed lands must be statutory, conferred by ANCSA.

"Valid existing rights" protected by ANCSA include not only interests created by the Federal Government, but may also include interests created by the State of

Alaska so long as the latter are not interests leading to acquisition of fee title.

Open-to-entry leases issued by the State of Alaska pursuant to A.S. 38.05.077 are protected as valid existing rights by the specific terms of sec. 14(g) of ANCSA because they are leases issued under sec. 6(g) of the Alaska Statehood Act.

Where open-to-entry leases contain no provisions to purchase the leased land, but provide only for renewal upon expiration of a five-year term, the right of purchase asserted under A.S. 38.05.077 is not granted by the lease within the terms of sec. 14(g) of ANCSA, but appears to be an associated preference right granted in connection with the leasing program to individuals holding such leases.

Where the asserted right to purchase lands held under an open-to-entry lease can be exercised under State statutes only if the lease is relinquished, relinquishment of the lease and subsequent issuance of patent to the land would constitute a new interest created subsequent to ANCSA, contrary to sec. 11(a)(2) which specifically withdraws lands TA'd to the State "from the creation of third-party interests under the Alaska Statehood Act."

The State may not extend a preference right to purchase lands under an open-to-entry lease program to which a Native Corporation will hold title; although a Native Corporation, succeeding under sec. 14(g) to the interest of the State as lessor, may wish to sell the leased land to the lessee, the Board finds no mechanism in ANCSA for the enforcement of such a right in the lessee against a Native patentee.

When an interest in land selected by and tentatively approved to the State of Alaska was transferred from one State agency to another, the complete interest remained subject to the withdrawal and selection provisions of sec. 11(a) and sec. 12 of ANCSA; thus transfer by the State of a permit to extract natural resources from the State Division of Lands to the State Division of Aviation does not place the State in the position of a protected third party under ANCSA.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Inasmuch as the disputed gravel free use permits were transferred from one State agency, the Division of Lands, to another State agency, the Department of Highways, they do not constitute third-party interests protected as valid existing rights under § 14(g) of ANCSA.

Appeal of Chugach Natives, Ltd., 3 ANCAB 325 (Aug. 17, 1979) 86 I.D. 392

Statehood Act Selections

Generally

Under 43 CFR, Part 4, 4.1(5) and Subpart J, the Alaska Native Claims Appeal Board has jurisdiction over an appeal by the State of Alaska from an adverse decision of the Bureau of Land Management on a land selection application pursuant to the Alaska Statehood Act when the BLM's adverse decision is based upon a construction

of the provisions of the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. IV 1974), *as amended*, 89 Stat. 1145 (1976).

The State of Alaska has standing to appeal a Decision of the Bureau of Land Management to the Alaska Native Claims Appeal Board as a party "who claims a property interest in land affected" by a Decision of the Bureau of Land Management, within the meaning of 43 CFR 4.902, when the BLM Decision vacates the tentative approval previously given to the State's selection and rejects the State's land selection application filed under the Alaska Statehood Act because of a conflict with the provisions of the Alaska Native Claims Settlement Act.

Appeal of the State of Alaska, 1 ANCAB 281 (Dec. 20, 1976) 83 I.D. 685

Tentative Approvals

Prior to ANCSA, the State's interest in its tentatively approved selections was subject to divestment upon proof of Native use and occupancy, and was subject to Congressional resolution of such claims. Unadjudicated claims of aboriginal title remained the only impediment to selection of such lands.

The express terms of secs. 11 and 12 of ANCSA make lands previously TA'd to the State of Alaska available for selection by qualified Native Corporations, indicating the conclusion of Congress that such lands were subject to disposal in settlement of Native claims.

ANCSA provides in secs. 11(a)(2) and 12(a)(1) that each village may select up to 69,120 acres of its total entitlement from TA'd lands within the area, usually 25 townships, surrounding the village. Such State TA's, already encumbered by aboriginal title to lands on which use and occupancy could be proved, were now subject to a statutory prior right of selection by village corporations; a Native right of selection, based not on aboriginal title, but on Congressional grant in ANCSA.

The retroactive extinguishment of aboriginal title, and the resulting validation of State title, mandated by sec. 4(a) of ANCSA, applies to those lands tentatively approved to the State which are located outside Native village withdrawal areas.

Extinguishment of aboriginal title did not vest the State's title to those TA'd lands located *within* sec. 11(a)(2) withdrawal areas, for Congress clearly conferred on Native village corporations a superior right to select up to 69,120 acres of such lands.

The State's interest in TA'd lands located within sec. 11(a)(2) withdrawal areas did not vest prior to ANCSA, and did not vest subsequent to ANCSA as to lands properly selected by village corporations within the 3-year period mandated by sec. 12(a).

The State's interest vests in those TA'd lands within sec. 11(a)(2) withdrawals *not* selected by village corporations within statutory deadlines, for, upon completion of Native selections, the last encumbrance on the State's title is removed.

In withdrawing lands around villages tentatively approved to the State, Congress rejected the State's

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

LAND SELECTIONS--Continued

State Interests--Continued

Statehood Act Selections--Continued

Tentative Approvals--Continued

contention that tentative approval vested title in the State, and in consequence rejected the title the State had relied upon to dispose of TA'd lands to third parties.

Secs. 11(a)(1) and 11(a)(2) of ANCSA direct withdrawals for village selections to be made subject to valid existing rights. The withdrawal of State TA'd lands in sec. 11(a)(2) impliedly recognizes the existence of third-party interests created by the State prior to ANCSA, by prohibiting the creation of such interests subsequent to the withdrawal.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976)
83 I.D. 619

ANCSA provides in secs. 11(a)(2) and 12(a)(1) that each village may select up to 69,120 acres of its total entitlement from TA'd lands surrounding the village. Such State TA's, already encumbered by aboriginal title to lands on which use and occupancy could be proved, were not subject to a statutory prior right of selection by Village Corporations; a Native right of selection, based not on aboriginal title, but on Congressional grant in ANCSA.

The retroactive extinguishment of aboriginal title, and the resulting validation of State title, mandated by sec. 4(a) of ANCSA, applies to those lands tentatively approved to the State which are located outside Native village withdrawal areas.

Extinguishment of aboriginal title did not vest the State's title to those TA'd lands located within sec. 11(a)(2) withdrawal areas, for Congress clearly conferred on Native Village Corporations a superior right to select up to 69,120 acres of such lands.

The State's interest in TA'd lands located within sec. 11(a)(2) withdrawal areas did not vest prior to ANCSA, and did not vest subsequent to ANCSA as to lands properly selected by Village Corporations within the three-year period mandated by sec. 12(a).

The State's interest vests in those TA'd lands within sec. 11(a)(2) withdrawals not selected by Village Corporations within statutory deadlines, for, upon completion of Native selections, the last encumbrance on the State's title is removed.

In withdrawing sec. 11(a)(2) lands tentatively approved to the State, Congress rejected the State's contention that tentative approval vested equitable title in the State, and in consequence rejected the title the State had relied upon to dispose of TA'd lands to third parties.

Where the claimed "valid existing rights" were created by the State on lands tentatively approved to the State under the Statehood Act, the adjudication of the State's selection must be consolidated with the adjudication of the native land selection, and valid existing rights in the land must be determined in a single decision.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

LAND SELECTIONS--Continued

Survey

Pursuant to provisions of sec. 13 of ANCSA and regulations in 43 CFR 2650.5, selection of lands shall be in conformance with the United States Survey System. Therefore, those provisions which apply to the rectangular system of surveys as provided in 43 U.S.C. §§ 751-774 (1970), are applicable to selection made under ANCSA.

The smallest legal subdivision authorized pursuant to the rectangular system of surveys of the public lands, 43 U.S.C. §§ 751-774 (1970), is a quarter quarter section.

Unless all of the smallest legal subdivision, i.e., 1/4 1/4 of section, is within the prohibited 2-mile distance from the city boundary, BLM shall not reject said land for selection as being contrary to provisions of sec. 22(l) of ANCSA.

Appeal of Eyak Corp., 1 ANCAB 132 (Sept. 9, 1976)
83 I.D. 484

Third-Party Interests

The Municipality, as grantee of the State, could not acquire greater interests than its grantor and could not, prior to ANCSA, acquire equitable title; accordingly, any protection or priority afforded the Municipality must be statutory, conferred by ANCSA.

The Municipality is organized and may be dissolved under State law and presently has the power to exercise governmental functions including the acquisition, management, and disposal of land independent of control by the State. Until revoked or modified by constitutional or legislative amendment, such powers remain in force and render the Municipality an entity separate from the State for purposes of holding third-party interests under ANCSA.

Because the State was not prohibited by sec. 6(g) of the Statehood Act from granting tentatively approved lands to local governments, and neither the Statehood Act nor selection procedures in A.S. 29.18.190 require payment of consideration, the Municipality's interest in the disputed lands does not fail for lack of consideration.

Sec. 22(b) of ANCSA is not applicable to, and does not protect, the Municipality because having an interest created by the State of Alaska under State law, it is not an entryman under Federal public land laws leading to acquisition of title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites.

Secs. 11(a)(1) and 11(a)(2) of ANCSA direct withdrawals for village selections to be made subject to valid existing rights. The withdrawal of State TA'd lands in sec. 11(a)(2) impliedly recognizes the existence of third-party interests created by the State prior to ANCSA, by prohibiting the creation of such interests subsequent to the withdrawal.

The Municipality is not protected under sec. 14(g) of ANCSA because its interest leads to grant of fee title by the State, if the State were able to issue patent; such an interest is incompatible with conveyance to a Native grantee as contemplated by sec. 14(g).

Municipal corporations, organized to provide necessary Government services, are beneficiaries of sec. 14(c) of ANCSA in that they receive title to lands they use and occupy, and to additional lands for community expansion.

The Municipality's interest in lands improved for recognized public purposes is protected by sec. 14(c)(3) of ANCSA because the Municipality occupies the same position with regard to Eklutna as the local Government entities envisioned by Congress in enacting such reconveyance provision and the disputed land, while outside Eklutna Village, is within the village withdrawal area and has been improved for a public purpose.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

Where the State had not acquired equitable title to tentatively approved land selections within village withdrawal areas prior to ANCSA, a grantee of the State could not acquire a greater interest than its grantor and could not, prior to ANCSA, acquire equitable title sufficient to deprive Congress of power to dispose of the land in settlement of Native claims. Accordingly, any protection or priority afforded to third-party interests in the disputed lands must be statutory, conferred by ANCSA.

Open-to-entry leases issued by the State of Alaska pursuant to A.S. 38.05.077 are protected as valid existing rights by the specific terms of sec. 14(g) of ANCSA because they are leases issued under sec. 6(g) of the Alaska Statehood Act.

Where open-to-entry leases contain no provisions to purchase the leased land, but provide only for renewal upon expiration of a five-year term, the right of purchase asserted under A.S. 38.05.077 is not granted by the lease within the terms of sec. 14(g) of ANCSA, but appears to be an associated preference right granted in connection with the leasing program to individuals holding such leases.

Where the asserted right to purchase lands held under an open-to-entry lease can be exercised under State statutes only if the lease is relinquished, relinquishment of the lease and subsequent issuance of patent to the land would constitute a new interest created subsequent to ANCSA, contrary to sec. 11(a)(2) which specifically withdraws lands TA'd to the State "from the creation of third-party interests under the Alaska Statehood Act."

The State may not extend a preference right to purchase lands under an open-to-entry lease program to which a Native Corporation will hold title; although a Native Corporation, succeeding under sec. 14(g) to the interest of the State as lessor, may wish to sell the leased land to the lessee, the Board finds no mechanism in ANCSA for the enforcement of such a right in the lessee against a Native patentee.

When an interest in land selected by and tentatively approved to the State of Alaska was transferred from one State agency to another, the complete interest remained subject to the withdrawal and selection provisions of sec. 11(a) and sec. 12 of ANCSA; thus transfer by the State of a permit to extract natural resources from the State Division of Lands to the State Division of Aviation does not place the State in the position of a protected third party under ANCSA.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Sec. 22(i) of ANCSA, 43 U.S.C. § 1621(i) (1976), does not authorize the issuance of mineral leases on lands to be conveyed under ANCSA.

Appeal of Terry E. Krize and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 7, 1978)

Inasmuch as the disputed gravel free use permits were transferred from one State agency, the Division of Lands, to another State agency, the Department of Highways, they do not constitute third-party interests protected as valid existing rights under § 14(g) of ANCSA.

Appeal of Choggiung, Ltd., 3 ANCAB 325 (Aug. 17, 1979) 86 I.D. 392

Valid Existing Rights

Secs. 11(a)(1) and 11(a)(2) of ANCSA direct withdrawals for village selections to be made subject to valid existing rights. The withdrawal of State TA'd lands in sec. 11(a)(2) impliedly recognizes the existence of third-party interests created by the State prior to ANCSA, by prohibiting the creation of such interests subsequent to the withdrawal.

ANCSA protects as "valid existing rights," those rights, whether derived from the State or Federal Government, which do not lead to a grant of fee title and which were created prior to enactment of ANCSA. Rights leading to a fee, which had vested prior to enactment, would not be subject to Congressional disposal and would be excluded from withdrawals for Native selection. Rights of entrymen leading to grant of a fee under Federal public land laws, which had not vested prior to enactment of ANCSA, are treated by ANCSA as if vesting had occurred and are not categorized as "valid existing rights."

The interests described in sec. 14(g) of ANCSA are of a temporary or limited nature, in contrast to those derived from laws leading to a grant of fee title such as the entries protected in sec. 22(b), and, therefore, are not incompatible with Native fee ownership of the land.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

ANCSA protects, as "valid existing rights," those rights, whether derived from the State or Federal government, which do not lead to a grant of fee title and which were created prior to enactment of ANCSA. Rights leading to a fee, which had vested prior to enactment, would not be subject to Congressional disposal and would be excluded from withdrawals for Native selection. Rights of entrymen leading to a grant in fee under Federal public land laws, which had not vested prior to ANCSA, are treated by ANCSA as if vesting had occurred and are not categorized as "valid existing rights."

"Valid existing rights" protected by ANCSA include not only interests created by the Federal Government, but may also include interests created by the State of Alaska so long as the latter are not interests leading to acquisition of fee title.

The interests described in sec. 14(g) of ANCSA are of a temporary or limited nature, in contrast to those interests derived from laws leading to a grant of fee title such as the entries protected by sec. 22(b). Inclusion

Continued--

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

LAND SELECTIONS--Continued

Valid Existing Rights--Continued

in Native conveyances of lands subject to such interests, under administrative arrangements outlined in sec. 14(g) is appropriate, because such temporary or limited interests are not incompatible with Native ownership of the fee.

Open-to-entry leases issued by the State of Alaska pursuant to A.S. 38.05.077 are protected as valid existing rights by the specific terms of sec. 14(g) of ANCSA because they are leases issued under sec. 6(g) of the Alaska Statehood Act.

Where open-to-entry leases contain no provisions to purchase the leased land, but provide only for renewal upon expiration of a five-year term, the right of purchase asserted under A.S. 38.05.077 is not granted by the lease within the terms of sec. 14(g) of ANCSA, but appears to be an associated preference right granted in connection with the leasing program to individuals holding such leases.

Where the asserted right to purchase lands held under an open-to-entry lease can be exercised under State statutes only if the lease is relinquished, relinquishment of the lease and subsequent issuance of patent to the land would constitute a new interest created subsequent to ANCSA, contrary to sec. 11(a)(2) which specifically withdraws lands TA'd to the State "from the creation of third-party interests under the Alaska Statehood Act."

The State may not extend a preference right to purchase lands under an open-to-entry lease program to which a Native Corporation will hold title; although a Native Corporation, succeeding under sec. 14(g) to the interest of the State as lessor, may wish to sell the leased land to the lessee, the Board finds no mechanism in ANCSA for the enforcement of such a right in the lessee against a Native patentee.

Leases issued for the surface or minerals covered by a Native selection constitute a valid existing right protected by sec. 14(g) of ANCSA and any conveyance to a Native Corporation of lands on which such a lease has issued must be subject to the lease hold interest.

State-issued permits and contracts for resource uses issued to third parties before Dec. 18, 1971, are protected as valid existing rights under sec. 14(g) of ANCSA, and any conveyance to a Native Corporation of lands on which such permits or contracts have been issued must be subject to such interests.

When an interest in land selected by and tentatively approved to the State of Alaska was transferred from one State agency to another, the complete interest remained subject to the withdrawal and selection provisions of sec. 11(a) and sec. 12 of ANCSA; thus transfer by the State of a permit to extract natural resources from the State Division of Lands to the State Division of Aviation does not place the State in the position of a protected third party under ANCSA.

Since ANCSA recognizes and protects State-created interests as valid existing rights, as well as interests recognized or created under Federal law, thus involves interests which would not be of record in the BLM land office, BLM's administrative responsibility to identify, adjudicate and protect "valid existing rights" under ANCSA, are broader than under general Federal public land laws.

While decisions of the Bureau of Land Management and documents conveying title to Native corporations pursuant to ANCSA properly contain a general provision protecting "valid existing rights" in accordance with the provisions of sec. 14(g) of ANCSA and the regulations in 43 CFR 2650, such documents must additionally describe valid existing rights according to the nature of the right and approximate location on the land, and may incorporate by reference other BLM files and files of the Alaska Division of Lands only as a supplemental source of information.

Under ANCSA and the regulations in 43 CFR 2650, the Bureau of Land Management has the duty to ascertain whether a less-than-fee interest was issued to a third party, and must recite in the decision approving lands for conveyance to a Native Corporation that the conveyance is "subject to" such an interest.

Where the claimed "valid existing rights" were created by the State on lands tentatively approved to the State under the Statehood Act, the adjudication of the State's selection must be consolidated with the adjudication of the Native land selection, and valid existing rights in the land must be determined in a single decision.

Both the decision to convey lands, and the interim conveyance, must specifically identify those interests protected under ANCSA as valid existing rights. Where the title conveyed will be "subject to" a less-than-fee interest, the nature of the interest must be identified and the lands affected must be described, at least by section and, where possible, according to the smallest legal subdivision.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

Sec. 14(g) of ANCSA protects existing permits as valid existing rights and provides that patent is to be subject to the right of the permittee to the complete enjoyment of all rights, privileges, and benefits granted to him by the permit.

An expired special use permit is not an existing right and does not constitute a "valid existing right" under sec. 14(g) of ANCSA.

Use and occupancy of land under a permit from the U.S. Fish and Wildlife Service does not constitute a "valid existing right" in the land separate from the permittee's rights under the permit.

Appeal of Kodiak Island Setnetters Ass'n, 3 ANCAB 1 (June 12, 1978) 85 I.D. 200

Mere use and occupancy of a tract of land does not constitute a "valid existing right" pursuant to sec. 14(g) of ANCSA when neither the persons claiming such right nor their predecessors entered the land under any State or Federal law.

Appeal of Mr. & Mrs. G. Gregory Roe, 3 ANCAB 27 (June 26, 1978)

Pursuant to the policy of the Department of the Interior as set forth in Secretarial Order 3029 (43 FR 55287 (1978)), open-to-entry leases issued prior to the passage of ANCSA must be excluded from lands conveyed to village corporations pursuant to the Alaska Native Claims Settlement Act of Dec. 18, 1971, 85 Stat. 688; 43 U.S.C. §§ 1601-1611 (Supp. V 1975).

Appeal of Richard H. Robinson, 3 ANCAB 140 (Jan. 31, 1979) 86 I.D. 55

Appeal of James B. Bedell, 3 ANCAB 153 (Jan. 31, 1979) 86 I.D. 60

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

LAND SELECTIONS--Continued

Valid Existing Rights--Continued

Preference rights to purchase set forth in Public Land Order No. 1613, Apr. 7, 1958, that were outstanding as of the date of the passage of ANCSA, are valid existing rights protected by ANCSA.

Valid existing rights held by third parties that lead to acquisition of title, must be identified in the conveyancing document and the land covered thereby excluded from the conveyance to the selecting Native corporation.

Appeal of Raymond A. Kreig, 3 ANCAB 168 (Mar. 9, 1979)
86 I.D. 189

"Valid existing rights" protected by § 14(g) of ANCSA include both interests of a temporary or limited nature and interests leading to the acquisition of title, when such interests were created prior to ANCSA and are being perfected or maintained pursuant to State or Federal law.

Application by the State of Alaska for lands under the Federal Airport Act, and compliance with such law leading to the acquisition of title prior to ANCSA, is sufficient to create a valid existing right in the State of Alaska protected by § 14(g) of ANCSA.

Pursuant to regulations in 43 CFR 2650.3-1(a), interests protected pursuant to ANCSA which lead to fee title in the State are to be excluded from conveyance to a Native corporation.

Appeal of Tanacross, Inc., 3 ANCAB 219 (Apr. 23, 1979)
86 I.D. 257

An open-to-entry lease issued under A.S. 38.05.077, including any associated right to purchase the leased land granted by State statute, is protected as a valid existing right under ANCSA, and the leasehold must be excluded from any conveyance to a Native corporation under ANCSA.

Appeal of Raymond E. Miller, 3 ANCAB 238 (May 14, 1979)
86 I.D. 285

"Valid existing rights" protected by § 14(g) of ANCSA include interests of a temporary or limited nature when such interests were created prior to ANCSA and are being maintained pursuant to State or Federal law.

The leases in issue are sufficient to create valid existing rights in the appellants (to the extent of their terms) which are protected by § 14(g) of ANCSA. The affected lands must therefore be conveyed "subject thereto."

Though creating interests in the appellants which are protected by § 14(g) of ANCSA, Alaska Stat. § 38.05.102, as applied to the leases in issue, does not create a valid existing right leading to the acquisition of title which would require the subject lands to be excluded from the Native conveyance as required by Order No. 3029 (43 FR 55287) in its treatment of open-to-entry leases.

Appeal of Reed E. Oswalt et al., 3 ANCAB 261 (May 24, 1979)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

LAND SELECTIONS--Continued

Valid Existing Rights--Continued

Inasmuch as the disputed gravel free use permits were transferred from one State agency, the Division of Lands, to another State agency, the Department of Highways, they do not constitute third-party interests protected as valid existing rights under § 14(g) of ANCSA.

Appeal of Choggiung, Ltd., 3 ANCAB 325 (Aug. 17, 1979)
86 I.D. 392

Village Selections

ANCSA provides in secs. 11(a)(2) and 12(a)(1) that each village may select up to 69,120 acres of its total entitlement from TA'd lands within the area, usually 25 townships, surrounding the village. Such State TA's, already encumbered by aboriginal title to lands on which use and occupancy could be proved, were now subject to a statutory prior right of selection by village corporations; a Native right of selection, based not on aboriginal title, but on Congressional grant in ANCSA.

Eklutna, Inc., is not estopped from selecting the disputed lands by Resolutions 68-9 and 68-10 of the Eklutna Village Council because there is no evidence of any identity of interest or membership between the Council, an unincorporated community association, and Eklutna, Inc., nor is there any indication that the Eklutna Village Council was authorized to bind the Natives of Palmer.

Municipal corporations, organized to provide necessary Government services, are beneficiaries of sec. 14(c) of ANCSA in that they receive title to lands they use and occupy, and to additional lands for community expansion.

The Municipality's interest in lands improved for recognized public purposes is protected by sec. 14(c)(3) of ANCSA because the Municipality occupies the same position with regard to Eklutna as the local Government entities envisioned by Congress in enacting such reconveyance provision and the disputed land, while outside Eklutna Village, is within the village withdrawal area and has been improved for a public purpose.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976)
83 I.D. 619

ANCSA provides in secs. 11(a)(2) and 12(a)(1) that each village may select up to 69,120 acres of its total entitlement from TA'd lands surrounding the village. Such State TA's, already encumbered by aboriginal title to lands on which use and occupancy could be proved, were not subject to a statutory prior right of selection by Village Corporations; a Native right of selection, based not on aboriginal title, but on Congressional grant in ANCSA.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

The State Director, Bureau of Land Management, is not estopped from denying appellant's (Village Corporation) application for certain lands because BLM erroneously included those lands on its land records and on the map of lands sent to appellant as eligible for withdrawal under sec. 11(a)(1) of ANCSA.

Appeal of Tanacross, Inc., 2 ANCAB 379 (May 12, 1978)
85 I.D. 97

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

LAND SELECTIONS--Continued

Withdrawals

Lands located outside of sec. 11(a)(1) withdrawal area for a Native Village Corporation can only be withdrawn for selection pursuant to provisions of sec. 11(a)(3)(A) of ANCSA.

Appeal of English Bay Corp., 1 ANCAB 35 (June 4, 1976)
83 I.D. 454

Because Alaska acquired a present right or interest in Mental Health Lands immediately upon proper selection of same, and because that interest effectively transfers ownership in the lands to the State, such lands can no longer be considered "public lands" within the meaning of sec. 3(e) and are unavailable for Native village selection under secs. 11(a)(1) and 12(a)(1) of ANCSA.

Lands properly selected under the Alaska Mental Health Enabling Act are not "lands * * * that have been selected * * * by the State under the Alaska Statehood Act" and are not available for selection by Native villages under secs. 11(a)(2) and 12 (a)(1) of ANCSA.

Appeal of Seldovia Native Ass'n, Inc., 1 ANCAB 65 (July 1, 1976)
83 I.D. 461

Lands tentatively approved to the State under the Alaska Statehood Act are withdrawn for village selection by sec. 11(a)(2) of ANCSA. Because sec. 11(a)(2) withdrawals are terminated 3 years from the date of enactment of ANCSA by sec. 22(h)(2), a village land selection filed subsequent to Dec. 18, 1974, for tentatively approved State lands must be rejected.

Appeal of Port Graham Corp., 1 ANCAB 125 (Sept. 3, 1976)
83 I.D. 481

Lands withdrawn pursuant to ANCSA are not subject to § 316 of FLPMA, 43 U.S.C. § 1746 (1976).

Appeal of Alaska Railroad, 3 ANCAB 273 (June 7, 1979)
86 I.D. 397

On reconsideration, the Board vacates its prior holdings that lands withdrawn under the Alaska Native Claims Settlement Act, 85 Stat. 688, *as amended*, 43 U.S.C. §§ 1601-1628 (1976 and Supp. I 1977), are lands held for the benefit of Indians, Aleuts and Eskimos and thus are not "public lands" within the scope of FLPMA, *supra*, and that FLPMA does not apply to such lands.

Appeal of the Alaska Railroad (On Reconsideration), 3 ANCAB 351 (Sept. 18, 1979)
86 I.D. 452

NATIVE VILLAGE LAND SELECTIONS

Generally

An appeal will be summarily dismissed when the appellant fails to serve upon all persons required to be served, copies of the Notice of Appeal and other documents filed with the Board in support of its appeal.

Appeal of Bee-Yea-Lingde Corp., 1 ANCAB 13 (Dec. 29, 1975)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

NATIVE VILLAGE LAND SELECTIONS--Continued

Generally--Continued

Lands tentatively approved for State selection and conveyed by the State to municipalities or boroughs prior to enactment of ANCSA are not available for Native selection under ANCSA.

Lands tentatively approved for State selection and leased by the State to individuals with an option to buy will, if selected by a Native corporation, be included in the interim conveyance with the provision that the option to buy may be exercised against the Native corporation. Where the option had been exercised against the State and a State patent issued prior to the enactment of ANCSA, the land will be excluded from interim conveyance to the Native corporation.

Third party rights created by the State in lands selected by Natives under ANCSA should be identified by BLM in the decision to issue interim conveyance if possible, but need not be adjudicated.

ANCSA and the implementing regulations draw a basic distinction between valid existing rights leading to the acquisition of title and those of a temporary nature, requiring exclusion of the former from the interim conveyance but inclusion of the latter with provisions protecting the third parties rights for the duration of his interest. The statute and the implementing regulations do not distinguish, in protecting rights leading to the acquisition of title between those arising under Federal law and those arising under State law.

Valid Existing Rights Under the Alaska Native Claims Settlement Act, Sec. Order No. 3016 (Dec. 14, 1977)
85 I.D. 1 (1978)

Procedural Requirements

Summary Dismissal

Retroactive Application

43 CFR 4.905, providing for summary dismissal of an appeal for failure to file or serve, upon all persons required to be served, a notice of appeal, statement of reasons, or of standing, merely expresses the inherent authority of the administrative appeals board under 43 CFR Part 4, Subpart G, and, therefore, may be applied to appeals filed prior to the effective date of sec. 4.905, after notice and opportunity to comply with an order of the Board requiring service upon particular persons.

Appeal of Bee-Yea-Lingde Corp., 1 ANCAB 13 (Dec. 29, 1975)

NATIVE VILLAGE SELECTIONS

Lands withdrawn by sec. 11(a)(1) and (2) of the Alaska Native Claims Settlement Act are subject to selection by qualified Native villages notwithstanding the prior tentative approval of selections of those lands by the State of Alaska pursuant to the Statehood Act.

Where the State of Alaska had received tentative approval of a land selection and had granted a patent to a third party in accordance with § 6(g) of the Alaska Statehood Act, and where the State patent was granted before the enactment of the Alaska Native Claims Settlement Act, with the express approval of the various Native groups then concerned, a Native village may not later select those lands pursuant to the Alaska Native

NATIVE VILLAGE SELECTIONS--Continued

Claims Settlement Act, as a valid third party right to the land had already been created.

Where statute and regulation provide that lands selected by the State of Alaska must be surveyed before patent can issue, but no similar requirement has been imposed as a precondition to the conveyance of lands selected pursuant to the Alaska Native Claims Settlement Act, the State's contention that this disparity is discriminatory will not afford a basis for reversing a decision which rejected a State selection application in favor of a conflicting Native village selection.

The fact that filing fees are required as a condition precedent for State selections and are not required for Native village selections pursuant to the Alaska Native Claims Settlement Act is not a basis for vacating a decision awarding lands to the Native villages.

State of Alaska, 19 IBLA 178 (Mar. 18, 1975)

The filing of a State selection under the Alaska Statehood Act does not create a right that prevents a Native village from selecting those lands under the terms of the Alaska Native Claims Settlement Act.

State of Alaska, 19 IBLA 242 (Mar. 27, 1975)

The filing of a State selection application under sec. 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, 48 U.S.C. notes prec. § 21 (1970), does not create a right that prevents a Native Village from selecting those lands under the provisions of the Alaska Native Claims Settlement Act of Dec. 18, 1971, 85 Stat. 688, 43 U.S.C. §§ 1601-1624 (Supp. III 1973).

Whether Village selections authorized by the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. III 1973), constitute an unwarranted vitiation of the State selection provisions of the Alaska Statehood Act, 48 U.S.C. notes prec. § 21 (1970), and of the Compact of Admission to the Union, is beyond the consideration of this Board.

State of Alaska, 19 IBLA 316 (Apr. 7, 1975)

Where approval of an application to purchase sand and gravel pursuant to the Materials Disposal Act of 1947 is opposed by a Native village which has already selected the land on which the sand and gravel is located, and to whom conveyance is imminent, the application will be rejected.

Clarence Wren, 20 IBLA 47 (Apr. 21, 1975)

PRIMARY PLACE OF RESIDENCE

Generally

When a Village Corporation selects withdrawn lands in one section, but excepts from selection a smaller tract of withdrawn land within the section, no determination can be made as to whether a sec. 11 withdrawal terminated on the tract of land excepted from selection until such time as a decision is rendered by the Bureau of Land Management on the validity of the exception from selection.

As of Dec. 18, 1975, lands withdrawn under sec. 11(a)(1) or sec. 11(a)(3) and not selected under secs. 12 or 19

PRIMARY PLACE OF RESIDENCE--Continued

Generally--Continued

of the Act, became lands outside the areas withdrawn by sec. 11 and became available for selection as a primary place of residence under sec. 14(h)(5).

An applicant who filed an application for a primary place of residence within the time limits set forth by sec. 14(h)(5) and 43 CFR 2653.8 on land which was withdrawn by sec. 11(a)(1) or sec. 11(a)(3) as of the date of filing, shall not have his application rejected pursuant to 43 CFR 2091.1 as a premature filing when Departmental regulations specifically permit the selection of formerly withdrawn land after Dec. 18, 1975, but do not permit a primary place of residence applicant to refile his application.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977) 84 I.D. 891

Criteria

The language of regulation 43 CFR 2653.8-2(b)(1) is unequivocal that the applicant "must have a dwelling" on the tract of land applied for as a primary place of residence pursuant to sec. 14(h)(5) of ANCSA. Absent the meeting of this criteria the application must be rejected.

Appeal of Wilfred A. Young, 2 ANCAB 211 (Dec. 19, 1977)

In order to establish a primary place of residence pursuant to sec. 14(h)(5) of ANCSA, a dwelling must be constructed upon the land applied for as a primary place of residence.

The fact that an applicant has a dwelling in the vicinity or adjacent to land sought as a primary place of residence is not sufficient to meet the criteria necessary to establish a primary place of residence.

Appeal of Donald Watson, 2 ANCAB 258 (Dec. 29, 1977) 84 I.D. 1015

In order to establish a primary place of residence there must be evidence that the applicant resided on the tract applied for as his primary place of residence on a regular or seasonal basis for a substantial period of time.

Appeal of Donald A. Watson, 2 ANCAB 289 (Feb. 2, 1978) 85 I.D. 27

Filing Deadline

Waiver

Sec. 14(h)(5) of the Alaska Native Claims Settlement Act establishes a mandatory deadline for applications for a primary place of residence, which may not be waived in the exercise of Secretarial discretion.

Appeal of Theodore M. Witham, 1 ANCAB 20 (Dec. 29, 1975) 83 I.D. 445

PRIMARY PLACE OF RESIDENCE--Continued

Intent to Reside W/o Evidence of Actual Resid. is Insuff. to Estab. Claim to Land as Prim. Place of Resid.

Sec. 14(h)(5) and 43 CFR 2653.0-5 of the Alaska Native Claims Settlement Act require that land applied for as a primary place of residence be occupied by the applicant as a primary place of residence on Aug. 31, 1971. "Primary place of residence" as contemplated by 43 CFR 2653.0-5(d) means a place comprising a primary place of residence of an applicant on Aug. 31, 1971, at which he regularly resides on a permanent or seasonal basis for a substantial period of time.

Appeal of Joe Klimas, 1 ANCAB 26 (Apr. 28, 1976)
83 I.D. 452

REGIONAL CORPORATIONS

Lands available for selection by a Regional Corporation under sec. 12 of ANCSA are limited to those lands withdrawn pursuant to sec. 11 of ANCSA.

Sec. 17(d)(2)(E) of ANCSA is not intended to provide lands for selection by a Regional Corporation in addition to lands withdrawn for selection pursuant to sec. 11 of ANCSA. Sec. 17(d)(2)(E), rather, is intended to postpone the time within which the Regional Corporations may receive patent to any lands under dual withdrawal until Congress has first acted upon the same or has failed to act within the 5-year period mandated by sec. 17(d)(2)(D).

Appeal of Doyon, Ltd., 2 ANCAB 336 (Mar. 22, 1978)

RENUNCIATION OF ENROLLMENT IN METLAKATLA INDIAN COMMUNITY

The right of renunciation or expatriation is the natural and inherent right of the individual.

Any member of any Indian tribe is at full liberty to terminate his tribal relationship whenever he so chooses, although it has been said that such termination will not be inferred "from light and trifling circumstances."

Henry Sam Littlefield, Jr., 7 IBIA 120 (Mar. 30, 1979)
86 I.D. 217

SUMMARY DISMISSAL

An appeal will be summarily dismissed when the appellant fails to serve upon all persons required to be served, copies of the Notice of Appeal and other documents filed with the Board in support of its appeal.

Appeal of Nee-Tes-Lingde Corp., 1 ANCAB 13 (Dec. 29, 1975)

An appeal will be summarily dismissed when, in response to a motion to show cause, the appellant states in writing it has no objection to the dismissal.

Appeal of Kodiak Island Borough, 3 ANCAB 108 (Dec. 18, 1978)

SURVEY

Generally

Procedures adopted to implement the Public Land Survey System as provided in Title 43, Chapters 1 and 16, and regulations promulgated thereunder are made applicable to land withdrawals by sec. 13 of ANCSA.

Establishing of "standard parallel" or "correction" lines in compliance with authorized procedure to implement Public Land Survey System is not inconsistent with provisions of sec. 11(a)(1) withdrawal.

Where townships, which by legal description have a common corner, are not in actual physical contact due solely to the location of a "standard parallel" or "correction" line, the requirement of sec. 11(a)(1)(B) or (C) that townships "corner" will be considered complied with.

Appeal of Eklutna, Inc., 1 ANCAB 165 (Sept. 20, 1976)
83 I.D. 500

The Alaska Native Claims Appeal Board, in reversing a previous decision, finds that townships, which by legal description have a common corner, but are not in actual physical contact due to the location of a "standard parallel" or "correction" line, such townships shall be considered as not cornering for purposes of sec. 11(a) of ANCSA.

Appeal of Eklutna, Inc., 2 ANCAB 214 (Dec. 19, 1977)
84 I.D. 982

Procedures

The Bureau of Land Management was not in error in using survey procedures which varied from those specifically stated in the 1947 BLM Manual of Surveying Instructions when such procedures were utilized in order to avoid perpetuating an earlier surveying error into a new original township survey.

Appeal of Tanacross, Inc., 2 ANCAB 379 (May 12, 1978)
85 I.D. 97

Standard Parallel

Where townships, which by legal description have a common corner, are not in actual physical contact due solely to the location of a "standard parallel" or "correction" line, the requirement of sec. 11(a)(1)(B) or (C) that townships "corner" will be considered complied with.

Appeal of Eklutna, Inc., 1 ANCAB 165 (Sept. 20, 1976)
83 I.D. 500

The Alaska Native Claims Appeal Board, in reversing a previous decision, finds that townships, which by legal description have a common corner, but are not in actual physical contact due to the location of a "standard parallel" or "correction" line, such townships shall be considered as not cornering for purposes of sec. 11(a) of ANCSA.

Appeal of Eklutna, Inc., 2 ANCAB 214 (Dec. 19, 1977)
84 I.D. 982

VILLAGE ELIGIBILITY

Generally

After expiration of the period in which a decision finding a village eligible may be appealed, and the village has been certified as eligible for benefits under § 11 of ANCSA, the Board has no jurisdiction over an appeal challenging the eligibility of the village and will dismiss such an appeal.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 363 (Mar. 31, 1978)

Appeal of Irving C. Wedmore, 3 ANCAB 252 (May 16, 1979)

Unlisted Villages

A village or community in southeast Alaska which is not listed within sec. 16(a) of the Alaska Native Claims Settlement Act is not eligible for benefits under the Act.

Appeal of Ketchikan Indian Corp., 2 ANCAB 169 (Nov. 8, 1977)

VILLAGE ENTITLEMENT

The determination that a Village Corporation is eligible under sec. 11 of ANCSA is a finding that such village had at least a minimum Native population of 25 on the 1970 census enumeration date and thus entitles such village to at least the minimum acreage allocation pursuant to sec. 14(a) of ANCSA.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 183 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 187 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 191 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 195 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 199 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 203 (Dec. 19, 1977)

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 207 (Dec. 19, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 223 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 227 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 231 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 235 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 239 (Dec. 20, 1977)

Appeal of U.S. Fish and Wildlife Services, 2 ANCAB 243 (Dec. 20, 1977)

U.S. Fish and Wildlife Service, 2 ANCAB 264 (Jan. 23, 1978)

Appeal of State of Alaska, 2 ANCAB 284 (Feb. 1, 1978)

VILLAGE ENTITLEMENT--Continued

The determination that a Village Corporation is eligible under sec. 11 of ANCSA is a finding that such village had at least a minimum Native population of 25 on the 1970 census enumeration date and thus entitles such village to at least the minimum acreage allocation of 69,120 acres of land pursuant to sec. 14(a) of ANCSA.

Appeal of Omar Stratman et al., 2 ANCAB 329 (Mar. 23, 1978)

WAIVER

Failing to select land available within its sec. 11(a)(1) withdrawal, a Native Village Corporation cannot by giving consent and waiver to another Native Village Corporation make said lands available for selection under provision of sec. 12(a) of ANCSA.

Appeal of English Bay Corp., 1 ANCAB 35 (June 4, 1976) 83 I.D. 454

WITHDRAWALS AND RESERVATIONS

Generally

Selection of lands by Native Village Corporations pursuant to provisions of sec. 12(a) of ANCSA is not permitted outside of lands withdrawn by provisions of sec. 11(a)(1) as they relate to the location of the selecting village.

Appeal of English Bay Corp., 1 ANCAB 35 (June 4, 1976) 83 I.D. 454

A withdrawal of public lands for a utility and transportation corridor under sec. 17(c) of the Alaska Native Claims Settlement Act, subject to valid existing rights, precludes selection of those lands by a Native group under sec. 14(h) of the Alaska Native Claims Settlement Act.

Appeal of Wisenak, Inc., 1 ANCAB 157 (Sept. 15, 1976) 83 I.D. 496

The express terms of secs. 11 and 12 of ANCSA make lands previously TA'd to the State of Alaska available for selection by qualified Native Corporations, indicating the conclusion of Congress that such lands were subject to disposal in settlement of Native claims.

The State's interest in TA'd lands located within sec. 11(a)(2) withdrawal areas did not vest prior to ANCSA, and did not vest subsequent to ANCSA as to lands properly selected by village corporations within the 3-year period mandated by sec. 12(a).

The State's interest vests in those TA'd lands within sec. 11(a)(2) withdrawals not selected by village corporations within statutory deadlines, for, upon completion of Native selections, the last encumbrance on the State's title is removed.

In withdrawing lands around villages tentatively approved to the State, Congress rejected the State's contention that tentative approval vested title in the State, and in consequence rejected the title the State had relied upon to dispose of TA'd lands to third parties.

Secs. 11(a)(1) and 11(a)(2) of ANCSA direct withdrawals for village selections to be made subject to valid existing rights. The withdrawal of State TA'd lands in sec. 11(a)(2) impliedly recognizes the existence of

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

WITHDRAWALS AND RESERVATIONS--Continued

Generally--Continued

third-party interests created by the State prior to ANCSA, by prohibiting the creation of such interests subsequent to the withdrawal.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

The State's interest in TA'd lands located within sec. 11(a)(2) withdrawal areas did not vest prior to ANCSA, and did not vest subsequent to ANCSA as to lands properly selected by Village Corporations within the three-year period mandated by sec. 12(a).

The State's interest vests in those TA'd lands within sec. 11(a)(2) withdrawals not selected by Village Corporations within statutory deadlines, for, upon completion of Native selections, the last encumbrance on the State's title is removed.

In withdrawing sec. 11(a)(2) lands tentatively approved to the State, Congress rejected the State's contention that tentative approval vested equitable title in the State, and in consequence rejected the title the State had relied upon to dispose of TA'd lands to third parties.

Lands on which the United States has issued patent either to the State or to a private individual are not within the definition of "public lands" in sec. 3(e) of ANCSA, were not withdrawn by sec. 11 of ANCSA, and therefore are not available for selection under ANCSA.

Appeals of the State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1 (June 9, 1977) 84 I.D. 349

The withdrawal of lands pursuant to sec. 11(a)(1) of ANCSA took place on Dec. 18, 1971, the date of passage of ANCSA.

When a Village Corporation selects withdrawn lands in one section, but excepts from selection a smaller tract of withdrawn land within the section, no determination can be made as to whether a sec. 11 withdrawal terminated on the tract of land excepted from selection until such time as a decision is rendered by the Bureau of Land Management on the validity of the exception from selection.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977) 84 I.D. 891

Segregation of lands covered by a withdrawal application filed by a military agency, accomplished by a notation of the land records, does not prevent statutory withdrawal of such lands for selection by a Native Corporation pursuant to sec. 11 of ANCSA.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

Where a decision rejects an application for an Alaska grazing lease because of an asserted Secretarial policy against granting such applications for land withdrawn pursuant to sec. 17(d)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(d)(2) (Supp. V 1975), but the record on appeal is incomplete with respect to the existence of such policy, the record should be remanded for further documentation.

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

WITHDRAWALS AND RESERVATIONS--Continued

Cornering

Generally

Where townships, which by legal description have a common corner, are not in actual physical contact due solely to the location of a "standard parallel" or "correction" line, the requirement of sec. 11(a)(1)(B) or (C) that townships "corner" will be considered complied with.

The provisions of sec. 12(a)(2) of ANCSA and regulations in 43 CFR 2651.4 that lands selected--"be contiguous and in reasonably compact tracts"--are not inconsistent with a finding that townships are properly withdrawn under sec. 11(a)(1)(B) or (C) though actual physical cornering is prevented due to a township-offset resulting from location of a "standard parallel."

Appeal of Eklutna, Inc., 1 ANCAB 165 (Sept. 28, 1976) 83 I.D. 500

The Alaska Native Claims Appeal Board, in reversing a previous decision, finds that townships, which by legal description have a common corner, but are not in actual physical contact due to the location of a "standard parallel" or "correction" line, such townships shall be considered as not cornering for purposes of sec. 11(a) of ANCSA.

Appeal of Eklutna, Inc., 2 ANCAB 214 (Dec. 19, 1977) 84 I.D. 982

Survey Offsets

A township, which is by legal description and in the prescribed plan of rectangular survey, located within a sec. 11(a)(1)(C) of ANCSA withdrawal, becomes excluded from such withdrawal when it fails to physically share a common corner with a township withdrawn under sec. 11(a)(1)(B) of ANCSA because BLM made an offset at that corner in order to cure a survey error.

Appeal of Tanacross, Inc., 2 ANCAB 379 (May 12, 1978) 85 I.D. 97

Deficiency

Lands located outside of sec. 11(a)(1) withdrawal area for a Native Village Corporation can only be withdrawn for selection pursuant to provisions of sec. 11(a)(3)(A) of ANCSA.

Appeal of English Bay Corp., 1 ANCAB 35 (June 4, 1976) 83 I.D. 454

Federal Installations

The exception in sec. 3(e) of ANCSA for the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation, can apply to lands which are not formally withdrawn for the agency using such lands and seeking to protect its use by invoking the exception.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

WITHDRAWALS AND RESERVATIONS--Continued

Termination

Under sec. 22(h)(1) of ANCSA, the withdrawal of lands pursuant to sec. 11(a)(1) terminated as of Dec. 18, 1975, a date 4 years after the date of enactment of the Act, unless the lands were selected by a Native Corporation under sec. 12 of ANCSA.

Appeal of William Thomas Woolard, 2 ANCAB 150 (Nov. 3, 1977)
84 I.D. 891

APPEALS
(See also Civil Rights, Contracts, Federal Coal Mine Health and Safety Act of 1969, Grazing Permits and Licenses, Indian Probate, Indian Tribes, Rules of Practice, Torts, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970--if included in this Index.)

A decision by a district manager denying a requested award of grazing privileges must state the reasons therefore, and not simply the conclusion that the applicant is not qualified.

Ervin J. Crowder, 20 IBLA 305 (May 30, 1975)

Under 43 CFR 4.402, an appeal is subject to summary dismissal by the Board of Land Appeals when notice of appeal or statement of reasons is not served on adverse parties within the time prescribed.

Elmer Peterson, 21 IBLA 52 (June 17, 1975)

Where an oil and gas lessee appeals from a decision of an Oil and Gas Supervisor's determination that additional royalties are due to the Government, and simultaneously files a request for suspension of the ruling, which is granted by the Geological Survey "until further notice," prejudgment interest continues to accrue during the period of the suspension. This conclusion is premised on the doctrine that interest is compensation for delay in payment.

Atlantic Richfield Co., 21 IBLA 98 (June 30, 1975)
82 I.D. 316

A Bureau of Land Management office has no jurisdiction to take further action on an oil and gas lease application where there has been an appeal to the Board of Land Appeals on that application.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

Where high bids, not clearly spurious or irresponsible, tendered at a competitive sale of oil and gas leases, are rejected solely on the statement of a field official that the bids are inadequate, and no basis whatever for that conclusion is reflected in the case records, the decision will be set aside and the case will be remanded for the compilation of a proper record and readjudication of the acceptability of the bids.

Arkla Exploration Co., 22 IBLA 92 (Sept. 22, 1975)

Frances J. Richmond, 24 IBLA 303 (Apr. 5, 1976)

APPEALS--Continued

A qualified heir or devisee of a deceased applicant for a mineral lease under 43 CFR 3564, or the administrator or executor of his estate, may receive the lease in the applicant's stead, or maintain an appeal from the rejection of such application on the same basis as the heirs or representatives of deceased applicants for other kinds of mineral leases where no third-party interests require consideration.

George W. Wright, Sr. (Deceased), 22 IBLA 280 (Oct. 30, 1975)

Where, prior to the rejection of her application, an applicant for a Native allotment was advised of findings which, unless rebutted, would result in the rejection of the application, and was afforded an extended period of time in which to submit additional evidence, evidence which is thereafter submitted for the first time on appeal from the rejection decision, without explanation of why it was not submitted when due, will not be favorably considered in adjudicating the propriety of the decision appealed from.

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Mary Arcjiak, 22 IBLA 384 (Nov. 21, 1975)

An appeal to the Director, Geological Survey, is properly dismissed by him where the appellant failed to comply with the procedure prescribed by the applicable regulations with respect to the form and content of the notice of appeal, the time afforded for the filing of additional reasons, arguments or briefs, and the procedure for obtaining an extension of such time, and no valid reason is given which would warrant excusing such failures as an exercise of administrative discretion.

Robert B. Ferguson, 23 IBLA 29 (Dec. 2, 1975)

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from a rejection of a Native allotment application in the absence of a satisfactory showing why the evidence was not submitted to Bureau of Land Management within the period afforded the applicant for the submission of such evidence.

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from rejection of a Native allotment satisfactory to it why the evidence was not submitted to the Bureau of Land Management within the 60-day period afforded the applicant to submit a further evidence in support of his application. General, rather than specific, allegations of difficulties in travel and communicating in Alaska are not satisfactory showings of the reason for late filing of such evidence.

Linda L. Walker, 23 IBLA 299 (Jan. 14, 1976)

Rejection of the high bid tendered for a parcel of land offered at a sale of competitive oil and gas leases will be affirmed on appeal where the case file contains memoranda from the U.S. Geological Survey sufficient to establish that the pre-sale minimum evaluation for the tract was accomplished by a GS lease sale committee consisting of an engineer and a geologist, and their reasoned evaluation was considerably in excess of appellant's bid.

Arkla Exploration Co., 25 IBLA 220 (June 21, 1976)

Frances J. Richmond, 29 IBLA 137 (Mar. 3, 1977)

Statements of reasons for appeal will not be accorded favorable consideration where they do not state with some particularity the exact reason for appeal and the allegations are not supported by evidence.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

Since the Bureau of Land Management has no authority to issue a public land order withdrawing land, such authority existing only in the Secretary, the Under Secretary, and the Assistant Secretaries of the Department of the Interior, recommendations by officers of the Bureau of Land Management relating to withdrawals are not subject to review under the provisions of 43 CFR 4.450-2 or 43 CFR 4.410.

City of Kotzebue, 26 IBLA 264 (Aug. 20, 1976)
83 I.D. 313

Where the transmittal of an appeal to the Board of Land Appeals is accompanied by the request of the State Director that the case be remanded because the special stipulation which accompanied the decision from which the appeal was taken was not the correct one, the case is remanded for further consideration by the Bureau of Land Management, and the Board of Land Appeals does not pass on the reasonableness of either stipulation.

A A Minerals Corp., 27 IBLA 1 (Sept. 17, 1976)

Where an appellant fails to point out some error in a decision or to show that he has wrongly been deprived of some right, and instead limits his statement of reasons for appeal to allegations which are irrelevant and immaterial, the appeal will be dismissed as frivolous.

Duncan Miller, 28 IBLA 62 (Nov. 10, 1976)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Duncan Miller, 29 IBLA 174 (Mar. 14, 1977)

Duncan Miller, 34 IBLA 283 (Apr. 17, 1978)

United States v. David F. Mangum and Donald D. DeGuerre, 35 IBLA 131 (May 22, 1978)

Duncan Miller, 41 IBLA 129 (June 13, 1979)

A rejection of a high bid tendered for a parcel of land offered at a sale of competitive oil and gas leases will be affirmed on appeal where the record contains sufficient information from the U.S. Geological Survey to establish that the pre-sale minimum evaluation for the tract, which greatly exceeded the rejected bid, was not arbitrary or capricious, it having been arrived at by a lease sale committee consisting of two geologists and three engineers which in addition to considering the results of a computer analysis took into account a hand compilation and the judgment and knowledge of the committee.

Coquina Oil Corp., 29 IBLA 310 (Mar. 30, 1977)

Where a decision of the Board of Land Appeals is based upon an interpretation of Departmental policy, and that policy is subsequently revised and clarified so as to impel a different result in the case without prejudice to the right of any third party, on reconsideration by the Board that portion of its original decision will be modified and the revised policy will be implemented.

Werner Bergman (On Reconsideration), 31 IBLA 21 (June 20, 1977)

Where a right-of-way application has been rejected in part, an appeal therefrom should be dismissed if not filed within the period prescribed in 43 CFR 4.411.

When a right-of-way applicant fails to submit corrected maps and payment of charges within a reasonable time after notice, which notice does not prescribe a specific time therefor, but on appeal applicant explains the reasons for delay, a rejection of the application may be set aside and the case remanded.

Jerrold B. Cooley, Lucy M. Cooley, 32 IBLA 387 (Nov. 7, 1977)

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

Under 43 CFR 3522.2-1(a), a proposed readjustment of a coal lease should not be appealed directly to the Board of Land Appeals under 43 CFR 4.410, but, rather, a lessee's objections thereto should first be referred to and acted upon by the State Office, Bureau of Land Management.

California Portland Cement Co., 33 IBLA 223 (Dec. 28, 1977)

Under 43 CFR 4.410, any party to a case who is adversely affected by a decision of the Bureau of Land Management has a right of appeal to the Board of Land Appeals, even where the decision concerns legislation which has been repealed.

Fancher Bros., 33 IBLA 262 (Jan. 5, 1978)

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

APPEALS--Continued

A private contest decision canceling a disputed homestead entry will, in the absence of a timely and proper appeal, cut off all rights which the contestee may have acquired by his entry, and this result will not be affected by the fact that the contestee failed to appear at the contest hearing and, through his own neglect, failed to receive notice of the decision of the administrative law judge.

Wesley Laverne Edwards v. Paul Ugrub, 33 IBLA 277 (Jan. 5, 1978)

Under 43 CFR 4.401(a), a notice of appeal to the Board of Land Appeals may be considered even if not filed within the 30-day appeal period, where it is filed within 10 days of the deadline date and is transmitted within the appeal period.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

A timely appeal from rejection of an oil and gas lease offer because of a determination of known geologic structure suspends the rejection pending decision by this Board, and where the Geological Survey rescinds the KGS determination as having been erroneously made during the pendency of the appeal, the status quo ante of land involved is restored.

Where land was omitted from an oil and gas lease only because of an erroneous KGS determination, and the applicant has preserved his priority by timely appealing the rejection, it is proper to amend such lease to include such omitted land when the Geological Survey rescinds its erroneous KGS determination.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

A decision to return an application for a public sale constitutes an action adverse to the applicant by an officer of the Bureau of Land Management and is thus appealable to the Board of Land Appeals under 43 CFR 4.410.

United Park City Mines Co., 33 IBLA 358 (Jan. 18, 1978)

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a regulation of this Department.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

When an appeal is filed with the Board of Surface Mining and Reclamation Appeals from a decision made by the Office of Surface Mining Reclamation and Enforcement, that office loses jurisdiction and has no authority to take any action concerning it until that jurisdiction is restored by action of the Board that is dispositive of the appeal.

Apache Mining Co., 1 IBSMA 14 (July 13, 1978)
85 I.D. 395

APPEALS--Continued

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer was not proper and must be rejected, the applicant may not thereafter appeal the matter to this Board merely because the Bureau of Land Management, in implementing the Board's decision, mistakenly advised him that he had the right to such an appeal. The matter is res judicata, and the subsequent appeal must be dismissed.

Where the Board of Land Appeals, by a previous decision, has held that a particular oil and gas lease offer must be rejected, and the rejected applicant files suit for judicial review of that decision in the United States District Court, and also files a contemporaneous appeal to the Board from a BLM decision implementing the Board's decision, the Board will defer to the Court's jurisdiction and make no decision on the merits of the appeal, which is subject to summary dismissal by the Board.

Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that certain coal prospecting permits have terminated and that no preference right to a coal lease is attached to any of them, an unapproved assignee of the permits may not thereafter appeal the matter to this Board following Bureau of Land Management notification to the permittees of this Board's decision. The matter is res judicata and such subsequent appeal must be dismissed, absent compelling legal or equitable considerations.

Peabody Coal Co., 36 IBLA 242 (Aug. 14, 1978)

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer may properly be rejected for the reason that title to the lands involved was uncertain, and a new lease offer for the same lands is again rejected for the same reason, the matter is res judicata, and the subsequent appeal is properly dismissed.

N. L. Industries, Inc., 37 IBLA 335 (Oct. 26, 1978)

Under 43 CFR 4.1 the existence of a Secretarial policy limits review by the Board of Land Appeals to the question of whether the action under review is consistent with that policy.

The Board of Land Appeals will not exercise its de novo review authority to deny applications for Alaska grazing leases on the basis of trespass where (1) trespass was not cited as a reason for denial of the applications in the decision under appeal, (2) the record does not provide a clear basis for determining the applicant's responsibility for the trespass, and (3) there is no record of compliance with the procedures specified in 43 CFR 9239.0-9(b).

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

APPEALS--Continued

A final Departmental appellate decision construing a regulation will be given immediate effect, and will not be applied with prospective effect only, unless the decision alters materially the interpretation given the regulation by earlier Departmental decisions or official published opinions, and unless the equitable benefit of the decision is not outweighed by ill effects of allowing a benefit in derogation of the regulation.

D. E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978) 85 I.D. 408

Gertrude H. D'Amico, 39 IBLA 68 (Jan. 17, 1979)

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error and the allegations in his statement of reasons are vague and unsupported.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not with some particularity show adequate reason for appeal and support the allegations with evidence showing error.

Valley Mobile Communications, Inc., 38 IBLA 359 (Dec. 29, 1978)

An appeal from a decision denying a protest against the issuance of a patent must be dismissed if the patent has been issued, because the Department has no jurisdiction to act further in the matter.

Because issuance of a patent removes the land from Departmental jurisdiction, it is not proper to issue that patent simultaneously with dismissal of a protest against the patent application because such action deprives the protester of his right to review and precludes compliance with 43 U.S.C.A. § 1701(a)(5) (West Supp. 1978) which mandates objective administrative review of initial decisions.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

A mining claim contestee's allegation that BLM wrongly held a mining claim null and void ab initio will not be entertained where the contention is raised long after the time for appealing the decision has passed.

United States v. Jerry Proch et al., 39 IBLA 148 (Jan. 29, 1979)

A party adversely affected by a final order or decision of an officer of the Conservation Division of the Geological Survey has a right to appeal to the Director, Geological Survey, unless the decision was approved by the Secretary or Director prior to promulgation.

A party adversely affected by a final decision of the Director, Geological Survey, had a right of appeal to the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary.

Phoenix Resources Co., 39 IBLA 153 (Jan. 29, 1979)

APPEALS--Continued

Where Bureau of Land Management terminates a sodium lease because lessee failed to submit justification for holding a lease in excess of the acreage limitation, the decision will be set aside upon submission or explanation of failure to provide written information, and the case will be remanded for the State Office to determine whether the information submitted on appeal justifies continued lease tenure.

Clip Corp., 39 IBLA 161 (Jan. 29, 1979)

Where the Secretary has declined to exercise his jurisdiction, a decision rendered by this Board is final for the Department. Hence, statements by BLM and arguments of the Solicitor, while valuable to the Board, are not binding upon the Board.

R. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Ralph and Ruth Dickinson, 39 IBLA 258 (Feb. 15, 1979)

When a State Office rejects the offer of a first-drawn applicant in a drawing under the simultaneous oil and gas leasing program, an appeal by the applicant raises the issue of his qualifications to hold the lease. The qualifications of the second-drawn applicant are irrelevant until such time as the offer of the first-drawn applicant is rejected and all his avenues of appeal are exhausted. However, it is not improper for BLM to name the second-drawn applicant as an adverse party in a decision rejecting the first-drawn applicant.

Thomas R. Flickinger, William S. Flickinger, et al., 40 IBLA 53 (Mar. 16, 1979)

The applicable regulation, 43 CFR 4.414 (1977), allows the Board some discretion in deciding whether to disregard the answer of an appellee who fails to file an answer within 30 days after service on him of the notice of appeal or statement of reasons and whose delay in filing is not waived under the provisions of 43 CFR 4.401(a) (1977).

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (May 10, 1979)

Where the holder of an oil and gas lease on the Outer Continental Shelf has filed a suit in a Federal district court to recover certain royalties paid under his lease, the Board of Land Appeals will affirm a decision of the Director, Geological Survey, holding in abeyance the lessee's request for a refund while the suit is pending.

Tenneco Oil Co., 41 IBLA 195 (June 22, 1979)

The right of appeal to the Board is limited to parties to a case adversely affected by a decision of BLM. A person protesting a timber sale does not become a party to a case until such time as BLM has issued a final decision adverse to his or her interests. The case is ordinarily ripe for appeal only when an adverse decision is made on the protest.

Elaine Mikels et al., 41 IBLA 305 (July 3, 1979)

APPEALS--Continued

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska, 41 IBLA 309 (July 5, 1979)

A decision by the Bureau of Land Management canceling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

Blue Star, Inc., Atomic Western, Inc., Fremont Energy Corp., Ivor Adair, 41 IBLA 333 (July 11, 1979)

Where BLM fails to show that there was service of a decision rejecting an Alaska Native allotment and the applicant learns of his rejection 4-1/2 years after rejection, the applicant may file a timely appeal within 30 days of notice of the decision.

Mailing to the Bureau of Indian Affairs a carbon copy of a decision rejecting an application for an Alaska Native allotment is not service upon the applicant so as to comply with 43 CFR 4.401.

Gust J. Heft, Sr., 42 IBLA 86 (Aug. 13, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest, or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska et al., 42 IBLA 94 (Aug. 16, 1979)

APPEALS--Continued

Where, on appeal, a mining claimant alleges that he timely mailed the affidavits of assessment work to the proper BLM office but there is no evidence to indicate they were ever received, the claimant must bear the consequences of the loss and his inability to prove his allegation that they may have been received by the Bureau and subsequently lost.

Amanda Mining & Manufacturing Ass'n., 42 IBLA 144 (Aug. 16, 1979)

Roger Kohn, 43 IBLA 182 (Sept. 28, 1979)

Allegations on appeal will not be afforded favorable consideration where they are not stated with some particularity and supported by evidence.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Alaska Mental Health Enabling Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the determination to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings. If, however, the Board affirms the finding that the requirements of patent have been met, the State will have no further administrative recourse. Where the State had not, prior to its appeal, been afforded notice of the election, it should be afforded an opportunity to make such election.

State of Alaska v. Mattie B. Bartos, 42 IBLA 269 (Aug. 27, 1979)

State of Alaska v. Daniel Johnson, 42 IBLA 370 (Sept. 11, 1979) 86 I.D. 441

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. Howard D. Long, Dolores M. Killion, 43 IBLA 150 (Sept. 28, 1979)

Where an appellant admits in correspondence with the Department that the decision of the Bureau of Land Management State Office holding his mining claim invalid is correct, the appeal may be dismissed.

Ernest F. Hiniker, 43 IBLA 153 (Sept. 28, 1979)

Where an application to acquire Federal land is rejected by BLM for the reason that the applicant's own declaration of material facts stated in his application demonstrate conclusively that he is not entitled to the land as a matter of law, an effort on appeal to revise, amend, or deny the facts will not be considered absent a persuasive explanation of error in the application.

Andrew Petla, 43 IBLA 186 (Oct. 5, 1979)

APPEALS--Continued

Where a person moves from his record address without leaving a forwarding address, and a copy of a BLM decision affecting him is mailed to this last address of record and returned by the postal service as undeliverable, the decision is considered to have been "served" him as of the date it is returned to BLM. 43 CFR 4.401(c). Accordingly, the deadline for filing a notice of appeal is 30 days after the date the decision is returned to BLM.

BLM may not properly waive the untimely filing of a notice of appeal under 43 CFR 4.401(a) where it is clear that the notice of appeal was not transmitted to BLM until after the end of the time in which it was required to be filed.

Where a notice of appeal is not timely filed, it must be dismissed.

Micky Nickoli, 43 IBLA 296 (Oct. 17, 1979)

Where a decision by an official of the Bureau of Land Management is interlocutory in nature, and the future implementation of the decision is contingent upon the occurrence of an event not scheduled, an appeal from such decision will be dismissed in the absence of any showing of necessity for immediate resolution.

Marathon Oil Co., Union Oil Co. of California, 43 IBLA 309 (Oct. 22, 1979)

Under 43 CFR 3120.3-1, rejection of a high bid tendered at a sale of competitive oil and gas leases will be affirmed on appeal where the case file contains memoranda from the U.S. Geological Survey sufficient to establish that the rejection has a reasonable basis in fact.

Gerald S. Ostrowski (On Reconsideration after Remand), 44 IBLA 17 (Nov. 6, 1979)

A notice of appeal from Geological Survey's failure to approve a communitization agreement must be filed within 30 days after appellant is served with the decision thereof or the doctrine of administrative finality generally bars consideration of the same issue in a later appeal.

Gulf Oil Corp., 44 IBLA 292 (Dec. 26, 1979)

APPLICATIONS AND ENTRIES

GENERALLY

A notice of location for homestead settlement on lands applied for as a State selection under the Alaska Statehood Act is unacceptable for recordation.

Conrad S. Huckins et al., 18 IBLA 357 (Jan. 22, 1975)

Stanley Ray Hunt, 19 IBLA 259 (Mar. 31, 1975)

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Richard E. Crill et al., 18 IBLA 428 (Feb. 14, 1975)

Clifford Prisbrey, 24 IBLA 108 (Mar. 1, 1976)

Lewis H. Eslick, 24 IBLA 237 (Mar. 24, 1976)

Dallas C. Qualman et al., 36 IBLA 119 (July 25, 1978)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where applications for a right-of-way and a special land-use permit are filed in conformity with the requirements of regulations then in effect, and the regulations are amended while final action on the applications is pending, but the amended regulations are made effective at a future date, then if the right-of-way and permit are issued prior to the effective date of the amendments they will not be subject to the added requirements; but if the applications are still pending when the amendments become effective, the new regulations will govern.

Arizona Public Service Co., 20 IBLA 120 (Apr. 25, 1975)

A selection of land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

The issuance of a special land-use permit is discretionary, and the Bureau of Land Management may reject a special land-use permit application when the proposed use would adversely affect the public interest, and may offer, in the alternative, a permit providing for use consonant with proper management of national resource lands.

Jerry Tecklin, Leonard Brackett, 20 IBLA 308 (May 30, 1975)

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted "apparent inefficiency of the United States Mails."

Mar-Win Development Co., 20 IBLA 383 (June 12, 1975)

An acquired lands lease offer for land in which the United States owns only a fractional mineral interest is defective and subject to rejection when the applicant fails to accompany his offer with the statement required by the regulations showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror subsequently submits his statement regarding ownership of operating rights prior to a final decision rejecting the offer, the defect may be considered cured with priority of filing as of the time the statement was filed.

John Oakason, Jean Oakason, 21 IBLA 185 (July 25, 1975)

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Austral Oil Co., Inc., 21 IBLA 243 (Aug. 11, 1975)

The issuance of a public airport lease on the public domain lies within the discretion of the Secretary of the Interior. A decision rejecting an airport lease application in the exercise of that discretion will be affirmed when, even though the Board differs in its opinion of the importance of some of the factors recited as grounds for the rejection, the record shows the decision to be a reasoned analysis of the factors

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

involved, and no sufficient basis to disturb the decision is shown.

Boulder City Aero Club, Inc., 21 IBLA 343 (Aug. 18, 1975)

Until a final authoritative judicial determination is made of the title to geothermal resources in lands patented with a reservation of all minerals to the United States, a geothermal lease application which omits such patented lands from a section will not be considered in compliance with 43 CFR 3210.2-1(c) requiring all available lands in a section to be described in the lease application. However, the application may be suspended as to that section, rather than rejected, until the title question is resolved.

Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

The Recreation and Public Purposes Act authorizes the Secretary, in his discretion, to sell or lease tracts of national resource lands. The proposed mode for financing the development of land applied for pursuant to the Recreation and Public Purposes Act cannot compel issuance of a patent instead of a lease if issuance of a patent would be contrary to the public interest as determined by the Secretary or his delegate. Thus, in the event the applicant has secured financial resources by promising acquisition of title to the land, the proper action is not for the Bureau of Land Management to change the applicant's tenure status in violation of the public interest, but rather for the applicant to secure alternate financing arrangements.

Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182 (Oct. 7, 1975)

In the absence of a timely appeal from a decision rejecting the State of Alaska's selection application for certain lands, the lands are no longer segregated from other disposition and a withdrawal of those lands may attach, precluding subsequent selection by the State.

State of Alaska, 22 IBLA 229 (Oct. 16, 1975)

A decree of foreclosure by a United States District Court, which upholds the validity of a deed of trust executed on a trade and manufacturing site, is not subject to collateral attack in the Department of the Interior. Where the applicant to purchase the site has thus been deprived of any interest in the improvements and the site, he is no longer entitled to purchase the site.

Greater Alaska Development Corp., 23 IBLA 179 (Jan. 5, 1976)

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his/her failure to do so cannot be excused because of the asserted delay of the postal service.

John Paul Pratt, 24 IBLA 110 (Mar. 1, 1976)

Carma M. Pooley, 29 IBLA 304 (Mar. 30, 1977)

Jack Koegel, 30 IBLA 143 (May 12, 1977)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed State application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

A selection of available land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location. A subsequently filed notice of location for a headquarters site has no effect.

Wilfred S. Wood (On Reconsideration), 25 IBLA 37 (May 6, 1976)

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

Good Roads District No. 1, 25 IBLA 123 (June 7, 1976)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed therefor and any payment submitted therewith will be returned. Should there be a subsequent reclassification as suitable for disposal under the desert land laws, the land will be opened to entry on an equal opportunity basis.

One who submits a desert land entry petition-application for lands which have been classified as being unsuitable for disposal under the desert land laws gains no preference right to such lands should they be reclassified as disposable under the desert land laws. Lands which are reclassified as suitable for disposal will be opened to entry on an equal opportunity basis.

A desert land entry petition-application for land classified as being unsuitable for disposal under the desert land laws may not be held in suspense pending the possible future availability of the land.

Ralph G. Faulkner et al., 26 IBLA 110 (July 26, 1976)

The execution of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident of and physically within the land district in which the mining claim is located, is unauthorized, and such an application is invalid. The defect cannot be cured by an amendment signed by the claimant.

Floyd R. Bleak, 26 IBLA 378 (Sept. 9, 1976)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Pursuant to 43 CFR 2567.5(a)(1), a homestead entryman in Alaska must establish residence upon the land within 6 months of the date of allowance of the entry or within a maximum period of 12 months, if a 6-month extension of time was requested and granted. These periods do not commence at the time of the filing of the application.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, is defective and is properly rejected when the applicant fails to accompany its offer with the statement required by the regulation showing the extent of its ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror submits its statement of operating rights with its appeal, the defect may be considered cured with priority of filing as of that time.

Arkansas Western Gas Co., 27 IBLA 207 (Oct. 6, 1976)

Where an applicant to purchase a trade and manufacturing site or a headquarters site states he was frustrated in completing his improvements and showing sufficient use of the land as required by the law because of more difficult or complex problems than anticipated, but has not shown that this operation could reasonably be expected to be successful, such problems will not afford any basis for equitable adjudication of his application to purchase.

United States v. Ronald B. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

A delay in the adjudication of an application by officers or employees of the Department cannot create rights in Federal property contrary to law.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

Failure to answer completely a question on an application form for a desert land entry concerning citizenship of the applicant is not an adequate basis for rejecting the application when the requested information is readily apparent elsewhere on the application form.

Failure to include as required by 43 CFR 2521.2(b) the post office addresses of witnesses whose statements are part of an application for desert land entry is an adequate basis for rejecting the application.

William J. Hart, Lucile B. Hart, 30 IBLA 138 (May 12, 1977)

It is the responsibility of an applicant and entryman to keep BLM informed of his current address, with specific reference to the serial numbers of all cases affected thereby. Notification to BLM of a change of address with respect to a particular case does not constitute notice with respect to other cases not specifically described in such notification.

Apostolos Paliombeis, 30 IBLA 153 (May 16, 1977)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where the regulation allows the filing of an application for a prospecting permit on a copy of the approved form not correctly reproduced, and the application contains a statement that the applicant agrees to be bound by the term conditions on the approved form, an application which consists of a copy of only the first page of a two-page form is properly rejected when it is not accompanied by the required statement.

UOP, Inc., 31 IBLA 142 (June 30, 1977)

A petition-application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

A geothermal lease application is properly rejected to the extent that it includes land which has been reconveyed to the United States but which has only been opened to applications under the nonmineral public land laws.

Chevron Oil Co., 32 IBLA 275 (Sept. 27, 1977)

An applicant for prospecting permits is not the "sole party in interest," within the meaning of 43 CFR 3500.0-5(a), where another party participates in the preparation and filing of the application, and where an agreement exists at the time of filing under which the applicant is bound to assign to the other party any advantages gained by him from the applications.

Williadean Patton, Essex Minerals, Inc., National Bulk Carriers, Inc., 32 IBLA 350 (Oct. 21, 1977)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Rulon Van Tassel, 33 IBLA 221 (Dec. 22, 1977)

It is a proper exercise of discretion under the Federal Land Policy and Management Act of 1976 for the Bureau of Land Management to refuse to process and to reject applications for public sale pending on the date of the Act, even though it will continue to process bids and preference right applications for a sale held prior to the Act.

United Park City Mines Co., 33 IBLA 358 (Jan. 16, 1978)

"Subject to appropriation by him." The provision in 43 CFR 2511.4-2(a) permitting credit for residence and cultivation by a homestead entryman before the date of entry if during that period the land was "subject to appropriation by him" does not refer to land for which there were prior-filed homestead applications which are subsequently withdrawn or rejected. Therefore, until action is taken on prior-filed applications, final proof filed by a junior homestead applicant should not be rejected merely because the land is subject to the prior applications.

John R. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where a mineral patent application is supported by information sufficient to permit a mineral examination of the claims, but not sufficient for the adjudicator to approve the application for patent, he may properly call on the applicant for supplemental evidence to support the application. However, if the claimant fails to submit it, the adjudicator may not penalize such failure by summary rejection of the application for reasons relating to disputed issues of fact without notice and an opportunity for hearing.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

Sec. 9(b) of the Administrative Procedure Act, *as amended*, 5 U.S.C. § 558(c) (1976), does not apply to coal prospecting permit extension applications because the prospecting is not an "activity of a continuing nature" within the meaning of the statute. As the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 30 U.S.C. § 201 (1976), removed the Secretary of the Interior's discretion to grant extensions, applications for preference right leases filed after expiration of the initial 2-year permit term, and during pendency of extension applications, cannot be issued.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

Neither an application for an Alaska grazing lease nor an application for assignment of a grazing lease confer upon the applicant a right to a lease, the granting thereof being discretionary and subject to any changes in Secretarial policy.

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

An application for an oil and gas lease filed in the name of a person deceased at the time of filing is properly rejected as there then was no offeror qualified to hold a lease.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

A. Johnson & Co., Inc., 38 IBLA 182 (Dec. 6, 1978)

A land selection application filed pursuant to secs. 12(b)(1), 12(b)(3), and 14(h)(1) of the Alaska Native Claims Settlement Act must conform to the regulations promulgated under the statute as enacted at the time the application is filed unless a later amendment to the statute provides otherwise.

Neither P.L. 94-204 (89 Stat. 1145, 43 U.S.C. § 1611 (Supp. IV 1974)), nor the Terms & Conditions incorporated in the amendment, contain language which conflicts with, excludes, or preempts ANCSA regulations 43 CFR 2650.2(e)(1) and (2) requiring a legal description of lands applied for pursuant to ANCSA, or 43 CFR 2653.5(f) requiring a description and location of historical sites selected pursuant to sec. 14(h)(1) of ANCSA.

A land selection application filed pursuant to secs. 12(a)(1), 12(a)(3), and 14(h)(1) of ANCSA containing only a metes and bounds description of the exterior boundaries of a region, does not meet the requirements

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

for a legal description of 43 CFR 2650.2(e)(1) and (2) and 2653.5(f).

A land selection determined finally to be invalid pursuant to ANCSA or its implementing regulations is not protected within the meaning of sec. 22(h)(1) after the date of terminations.

Appeal of Cook Inlet Region, Inc., 3 ANCAB 111 (Dec. 27, 1978)
85 I.D. 462

Where the Secretary by appropriate notice in the *Federal Register* has classified certain lands for multiple use management and such lands are segregated from desert land entry, and the classification has not been terminated by either a reclassification or publication in *Federal Register* of termination of classification, BLM properly denied petition-application for desert land entry.

Paul M. Jenkins, 39 IBLA 141 (Jan. 29, 1979)

Melvin V. Frandsen, Mary C. Frandsen, 43 IBLA 130 (Sept. 26, 1979)

An entryman may not take advantage of sec. 7 of the Act of Mar. 3, 1891, entitling an entryman to a patent after 2 years from date of issuance of a receiver's receipt when there is no pending contest or protest against the validity of the entry, where he has not shown that preconditions of the Act have been met, *i.e.*, making the final payments required.

United States v. Jack Zeggy Boyd, Jr., 39 IBLA 321 (Feb. 27, 1979)

Rights may be established by occupancy of a trade and manufacturing site on vacant, unappropriated public domain in Alaska and filing of a notice of location thereof, despite a prior survey pursuant to a petition for survey of townsite lands, when the notice of location and occupancy of the claim for trade and manufacturing precedes settlement and occupancy under the townsite laws.

Carl A. Line, 40 IBLA 63 (Mar. 16, 1979)

When an applicant for a noncompetitive oil and gas lease is requested to provide additional information for the adjudication of his drawing entry card offer, the offer is properly rejected where the evidence provided is illegible, and applicant was notified of the illegibility but responded by sending more illegible evidence.

Richard E. Lewis, 40 IBLA 100 (Mar. 27, 1979)

Where an application for a special use permit is not filed until more than 10 months after a deadline for doing so imposed by BLM, it is properly rejected.

Outdoor Adventure River Specialists, Inc., 41 IBLA 132 (June 14, 1979)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where a Native allotment application is filed before the death of an applicant, proof of the applicant's use and occupancy, if otherwise timely, may be filed by the appropriate official of the Bureau of Indian Affairs pursuant to 43 CFR 2561.2(a) after the applicant's death. A decision rejecting the application because the proof was filed after the applicant's death must be set aside where the proof is not inconsistent with the application. Further proceedings must be served upon the heirs, known or unknown, by appropriate service, and also upon conflicting claimants, such as the State of Alaska.

Ernest L. Olson, Jr. (Deceased), 41 IBLA 179 (June 22, 1979)

An application for permit to drill for oil and gas in a designated Potash Area is properly denied where the applicant fails to show that his application comes within either of the two exceptions to the policy in favor of potash development enunciated in an Order of the Secretary, dated Oct. 7, 1975, 40 FR 51486.

Belco Petroleum Corp., 42 IBLA 150 (Aug. 16, 1979)

Pending applications for rights-of-way filed under the Acts of Feb. 15, 1901, and Mar. 4, 1911, shall be considered as applications under the Federal Land Policy and Management Act of 1976.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

Under the Federal Land Policy and Management Act of 1976, § 314, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claims located in 1977 must file an affidavit of assessment work or a notice of intention to hold the claim prior to Dec. 31 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned. Where an appellant asserts on appeal that he timely mailed proof of labor to the Bureau of Land Management, but the documents were not received by that office, the documents cannot be considered as filed with that office unless and until they are received by it.

John Newkirk et al., 42 IBLA 292 (Aug. 27, 1979)

James E. Yates, 42 IBLA 391 (Sept. 11, 1979)

BLM personnel may not attempt to "correct," complete, or interpret entries on oil and gas lease offer application forms in such a way as to perfect an otherwise unacceptable application, nor may an applicant "cure" a defect on his drawing entry card by the submission of supplemental information after the drawing.

Resources Exploration & Mining, Inc. (On Reconsideration), 43 IBLA 89 (Sept. 19, 1979)

Where a mineral patent application is supported by a mineral examination of the claim which finds a valid discovery and recommends issuance of a patent for a portion of the claim, the BLM may not summarily reject the application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Calcium Co., 44 IBLA 289 (Dec. 26, 1979)

APPLICATIONS AND ENTRIES--Continued

AMENDMENTS

Where an Alaska Native allotment application pending in the Department on Dec. 18, 1971, is later amended to include new or additional lands, the amendment to the application will not be considered as timely filed and will be rejected. However, a correction of a description, where the site was not properly identified on protraction diagrams, may be permitted.

Raymond Kapeak, 19 IBLA 68 (Feb. 25, 1975)

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

Edward B. Towne, 21 IBLA 304 (Aug. 14, 1975)

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in such an application received after the close of the monthly filing period in which the initial application was filed will not be allowed.

Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

Where an Alaska Native allotment applicant pending in the Department on Dec. 18, 1971, is later amended to include new or additional lands, the amendment to the application will not be considered as timely filed and will be rejected.

Annie Sorly, 22 IBLA 38 (Sept. 10, 1975)

An application for the amendment of a patent is properly rejected where the record contains insufficient evidence to show that the entryman entered lands not intended by him as his entry, and where the record fails to show what precaution to avoid error was taken by the entryman at the time of making the original entry, if in fact he intended to enter other lands.

Domenico Tussio et ux., 24 IBLA 141 (Mar. 8, 1976)

The amendment of a notice of location of a homesite in Alaska may be allowed where the application is filed within the life of the 5-year period granted, and where the amendment embraces lands which the applicant has actually occupied and possessed.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

The execution of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident of and physically within the land district in which the mining claim is located, is unauthorized, and such an application is invalid. The defect cannot be cured by an amendment signed by the claimant.

Floyd B. Bleak, 26 IBLA 378 (Sept. 9, 1976)

APPLICATIONS AND ENTRIES--Continued

AMENDMENTS--Continued

Where an Alaskan Native alleges that the land described in her Native Allotment Certificate is not the land she settled on and posted, her application for an amendment of the certificate will not be rejected solely because the certificate description is consistent with her application if she offers a reasonable explanation for the mistake and has actually occupied the land she seeks to have included in her certificate.

Edith Jacquot, 27 IBLA 231 (Oct. 12, 1976)

Where a homestead entry has been located on land later included within a withdrawal "subject to valid existing rights," the withdrawal attaches to the land within the homestead upon cancellation of the entry. An amendment of a homestead entry cannot include lands within a canceled adjoining entry to which a withdrawal has attached.

Pekka E. Merikallio, 30 IBLA 157 (May 10, 1977)

Where noncompetitive acquired lands oil and gas lease offers were allegedly deposited on the cashier's counter in the proper Bureau of Land Management office prior to close of business on a certain day, yet were not discovered by a Bureau employee until 6 a.m. the following day and date-time stamped as filed at 10 a.m. on such day, a protest and petition to amend the filing date of such offers are properly denied where the offeror produces no evidence to support her claim other than her personal affidavit; where no Bureau employee saw the offeror in the Bureau office at the time she claimed to have been there; where no Bureau employee saw the offers on the counter until the following day; and where third-party rights are involved.

Laura J. Spangler, 30 IBLA 265 (May 31, 1977)

CANCELLATION

The filing of a notice of location for a headquarters site does not prevent a withdrawal from attaching to the land prior to the time the locator of the headquarters site performs the requisite acts with respect to use and occupancy necessary to establish the right to purchase.

A headquarters site claim located prior to a withdrawal may be declared invalid by the Bureau of Land Management without awaiting the filing of a patent application where there has been insufficient compliance with the law to appropriate the land before the withdrawal. However, the Bureau should follow appropriate procedures. These should include giving notice to the claimant to show cause why the claim should not be invalidated where the notice of location does not show adequate compliance with the law sufficient to preclude the withdrawal, and initiating a contest and affording an opportunity for a hearing where there are disputed facts on the compliance with the law.

Richard T. Pope, 22 IBLA 374 (Nov. 17, 1975)

A request to reconsider a 1968 decision by the Department rejecting final proof for a homestead entry and canceling the entry is properly rejected in the absence of a showing of "extraordinary circumstances." In the absence of compelling legal or equitable reasons for reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

APPLICATIONS AND ENTRIES--Continued

CANCELLATION--Continued

Pekka E. Merikallio, 30 IBLA 157 (May 10, 1977)

BLM has discretion to reject public sale applications pursuant to R.S. 2455, repealed by the Federal Land Policy and Management Act of 1976, effective Oct. 21, 1976, where the sale has not been held by this date. The filing of a public sale application creates no rights under sec. 701(a) of FLPMA which prevent BLM from exercising its discretion to dismiss the application.

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

FILING

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George M. Crapo, Richard L. Crapo, 19 IBLA 208 (Mar. 21, 1975)

Under the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), a notice of location of a trade and manufacturing site filed after withdrawal of the land is acceptable if it is filed within 90 days of settlement and the settlement occurs prior to a withdrawal of the land. An application to purchase based on such an asserted settlement and filing will be rejected when it is not filed within the statutory life of the asserted claim, but the applicant may be afforded an opportunity to submit a justification for his late filing under the principles of equitable adjudication.

Edwin William Seiler (On Reconsideration), 20 IBLA 221 (May 9, 1975)

Since the statute authorizing cash payment to the holder of soldiers' additional rights requires that an applicant for such payment must give written notice to the Secretary of the Interior of his election to receive such payment prior to Jan. 1, 1975, an application received on Jan. 2, 1975, must be rejected.

J. Sidney Bood, 20 IBLA 319 (June 4, 1975)

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted "apparent inefficiency of the United States Mails."

Mar-Win Development Co., 20 IBLA 383 (June 12, 1975)

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against subsequent applications which were allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piecemeal adjudication.

Michael E. Heaney, 21 IBLA 339 (Aug. 18, 1975)

Nelda E. McAndrew, 24 IBLA 205 (Mar. 22, 1976)

It is improper for the Bureau of Land Management to require an applicant having partially conflicting noncompetitive acquired lands oil and gas lease offers filed in the regular over-the-counter procedure at different times to withdraw either his senior or junior offer simply because of the conflict.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

The notation on land office records of a noncompetitive oil and gas lease application does not prevent the State of Alaska from selecting the land pursuant to the Alaska Statehood Act.

Yukon Service, Inc., 22 IBLA 220 (Oct. 15, 1975)

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his/her failure to do so cannot be excused because of the asserted delay of the postal service.

John Paul Pratt, 24 IBLA 110 (Mar. 1, 1976)

Carma M. Pooley, 29 IBLA 304 (Mar. 30, 1977)

Jack Koegel, 30 IBLA 143 (May 12, 1977)

A selection application under the Alaska Statehood Act filed in the appropriate Bureau of Land Management Office for properly described land segregates the land from all appropriation based upon subsequent application or settlement and location.

A selection application under the Alaska Statehood Act that describes land according to an approved protraction diagram properly describes those lands if the official plat of survey has not been accepted.

John W. Eastland et al., 24 IBLA 240 (Mar. 25, 1976)

It is the responsibility of an applicant and entryman to keep BLM informed of his current address, with specific reference to the serial numbers of all cases affected thereby. Notification to BLM of a change of address with respect to a particular case does not constitute notice with respect to other cases not specifically described in such notification.

Apostolos Paliombeis, 30 IBLA 153 (May 16, 1977)

The filing of a petition-application is treated as a petition for classification of the land. The mere filing of the application does not vest in the applicant any interest in the land and repeal of the authorizing statute mandates rejection of the application.

Arthur H. Wallace, 30 IBLA 239 (May 31, 1977)

Where noncompetitive acquired lands oil and gas lease offers were allegedly deposited on the cashier's counter in the proper Bureau of Land Management office prior to close of business on a certain day, yet were not discovered by a Bureau employee until 6 a.m. the following day and date-time stamped as filed at 10 a.m. on such day, a protest and petition to amend the filing date of such offers are properly denied where the offeror produces no evidence to support her claim other than her personal affidavit; where no Bureau employee saw the offeror in the Bureau office at the time she claimed to have been there; where no Bureau employee saw the offers on the counter until the following day; and where third-party rights are involved.

Laura J. Spangler, 30 IBLA 265 (May 31, 1977)

An application for modification of an existing coal lease to include an entire section is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Estate of Malcolm B. McKinnon, 31 IBLA 290 (July 22, 1977)

An application for modification of an existing coal lease to include an additional 361.52 acres is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Gulf Oil Corp., 32 IBLA 13 (Aug. 29, 1977)

The authorized officer may not deem an oil and gas rental payment to have been timely filed, pursuant to 43 CFR 1821.2-2(g) if it is received at the State Office when it is not open to the public, even though the payment is presented on the last day in which payment can be made. Such payment is deemed to have been made on the day and hour the office is next open to business, as provided in 43 CFR 1821.2-2(d).

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental on time as required by sec. 31 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 188(b) (1970), where 20 minutes before the State Office closes to the public on the last day on which rental can be paid, petitioner instructs by telephone an agent who lives in the vicinity of the State Office to make the payment and the agent who alleges she was delayed by traffic and security measures makes payment after the office is closed to the public. In such circumstances the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Bob Burch, 32 IBLA 93 (Sept. 12, 1977)

Where a party is not the sole party in interest in applications for prospecting permits, his applications must be rejected under 43 CFR 3511.2-4(a)(7) if they do not comply with the mandatory provisions of 43 CFR 3502.7, which require submission of statements of all parties' respective interests and of any agreement between them, and submission of evidence of the qualifications of all parties to hold prospecting permits.

Where a party files applications for prospecting permits as an attorney-in-fact of another party, he must disclose his status as an agent by designating his principal as the "applicant" on the application forms, and must, under 43 CFR 3502.3-1 and 3502.6-1(a), file statements of qualifications for both himself and his principal, as well as a copy of the agreement establishing his power of attorney, or his applications must be rejected under 43 CFR 3511.2-4(a)(7).

Willadean Patton, Essex Minerals, Inc., National Bulk Carriers, Inc., 32 IBLA 350 (Oct. 21, 1977)

A decision by a Bureau of Land Management District Office rejecting an application for an extension of a mineral materials sale contract solely for the reason it was not timely filed in accordance with 43 CFR 3610.7 will be set aside and remanded for the authorized officer to determine whether the application may be considered as timely pursuant to 43 CFR 1821.2-2(g). This section permits the authorized officer to consider a document as being timely filed except where the law does not permit him to do so, the rights of a third party or parties have intervened, or the authorized officer determines that further consideration of the document would unduly interfere with the orderly conduct of business.

Don Kelland Materials, Inc., 35 IBLA 133 (May 22, 1978)

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

A. Johnson & Co., Inc., 38 IBLA 182 (Dec. 6, 1978)

Rights may be established by occupancy of a trade and manufacturing site on vacant, unappropriated public domain in Alaska and filing of a notice of location thereof, despite a prior survey pursuant to a petition for survey of townsite lands, when the notice of location and occupancy of the claim for trade and manufacturing precedes settlement and occupancy under the townsite laws.

Carl A. Line, 40 IBLA 63 (Mar. 16, 1979)

Under the Federal Land Policy and Management Act of 1976, § 314, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claims located in 1977 must file an affidavit of assessment work or a notice of intention to hold the claim prior to Dec. 31 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned. Where an appellant asserts on appeal that he timely mailed proof of labor to the Bureau of Land Management, but the documents were not received by that office, the documents cannot be considered as filed with that office unless and until they are received by it.

John Newkirk et al., 42 IBLA 292 (Aug. 27, 1979)

James E. Yates, 42 IBLA 391 (Sept. 11, 1979)

The Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1976), repealed the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 to 270-3 (1970), with the exception of applications pending on Dec. 18, 1971. A State Office decision rejecting a Native allotment application for an additional parcel of land filed pursuant to the Act of May 17, 1906, after Dec. 18, 1971, will be affirmed. Equitable adjudication, which requires substantial compliance with the law, will not be invoked where there is no evidence that such an application was timely filed with BIA.

Nora L. Sanford, 43 IBLA 74 (Sept. 19, 1979)

INHERITABILITY

Where an applicant with first priority dies after filing an oil and gas lease application but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed in all cases an offer to lease in compliance with 43 CFR 3102.8. Such offer will be effective as of the date of the original lease offer filed by the deceased.

Lamar M. Richardson, Jr., 42 IBLA 333 (Aug. 30, 1979)

Where an applicant with first priority dies after filing an oil and gas lease application but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

Estate of F. J. Bradshaw, 44 IBLA 107 (Nov. 20, 1979)

PRIORITY

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George W. Crago, Richard L. Crago, 19 IBLA 208 (Mar. 21, 1975)

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference-right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first-qualified applicant in the event the Department decides to issue a lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975)
82 I.D. 174

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against subsequent applications which were allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for

APPLICATIONS AND ENTRIES--Continued

PRIORITY--Continued

final action on the respective applications so as to avoid premature, piecemeal adjudication.

Michael E. Heaney, 21 IBLA 339 (Aug. 18, 1975)

Nelda E. McAndrew, 24 IBLA 205 (Mar. 22, 1976)

An over-the-counter oil and gas lease offer, properly rejected because it failed to meet the requirements of the regulations, may be considered as having priority as of the date the defect is cured where the curative action was taken during an appeal from the rejection of the offer.

Emerald Oil Co., 31 IBLA 119 (June 24, 1977)

The rejection of a homestead application in Alaska merely because there are prior-filed homestead applications for the same land is improper and premature where no action has been taken on the conflicting applications. If a prior-filed application is allowed, the land comes within an allowed entry of record and a junior application must be rejected thereafter. However, if the prior application is rejected or withdrawn, it no longer bars allowance of a junior application.

John E. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

An over-the-counter oil and gas lease offer, properly rejected because of a failure to meet the requirements of the regulations, but which rejection did not become final because an appeal was timely filed, may be considered as having priority as of the date the defect was cured.

Phillips Petroleum Co., 38 IBLA 344 (Dec. 22, 1978)

RIGHTS OF WIDOWS, HEIRS, OR DEVISEES

Where a Native allotment application is filed before the death of an applicant, proof of the applicant's use and occupancy, if otherwise timely, may be filed by the appropriate official of the Bureau of Indian Affairs pursuant to 43 CFR 2561.2(a) after the applicant's death. A decision rejecting the application because the proof was filed after the applicant's death must be set aside where the proof is not inconsistent with the application. Further proceedings must be served upon the heirs, known or unknown, by appropriate service, and also upon conflicting claimants, such as the State of Alaska.

Ernest L. Olson, Jr. (Deceased), 41 IBLA 179 (June 22, 1979)

VALID EXISTING RIGHTS

The mere filing of a notice of location for a headquarters site under 43 U.S.C. § 687a (1970) does not establish rights to land. If a claimant cannot also demonstrate the necessary use and occupancy of the site prior to the effective date of a withdrawal and establish a right of purchase, he does not have a "valid existing right" excepted from the withdrawal, and the withdrawal attaches to the land in the site.

Stephen E. Sorensen, 22 IBLA 258 (Oct. 28, 1975)

APPLICATIONS AND ENTRIES--Continued

VALID EXISTING RIGHTS--Continued

A homestead notice of location filed for lands open to location is acceptable for recordation. Where a homestead settler has marked the corners of his claim by posts prior to a withdrawal subject to valid existing rights, the claim survives the withdrawal if the location notice requirements have been satisfied.

Robert A. Rice, Jr., 22 IBLA 291 (Nov. 3, 1975)

The filing by a qualified applicant of a homestead application to enter unappropriated surveyed lands in Alaska segregates the land covered by the application from appropriation. Such an application will be considered to have created a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

The filing by a qualified applicant of an application for an allowed homestead entry of land which is open and available to such entry at the time of filing will operate to segregate the land from subsequent appropriation and invest the applicant with sufficient interest therein to preserve the land from the effect of a subsequent withdrawal which is made subject to valid existing rights.

Richard T. Pope, 27 IBLA 33 (Sept. 20, 1976)

A pending noncompetitive oil and gas lease offer is not a valid existing right protected by the savings clause in the Alaska Native Claims Settlement Act.

Neither the filing of an over-the-counter oil and gas lease offer, nor the holding of a drawing of simultaneously filed offers to determine the first-qualified offeror, creates any right to a lease or any property rights in the offeror that diminish the Secretary's discretion whether or not to issue a noncompetitive oil and gas lease on a given tract.

James W. Canon et al., 1 SEC. 1 (Apr. 15, 1977)
84 I.D. 176

The filing of a petition-application is treated as a petition for classification of the land. The mere filing of the application does not vest in the applicant any interest in the land and repeal of the authorizing statute mandates rejection of the application.

Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

A petition-application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

BLM has discretion to reject public sale applications pursuant to R.S. 2455, repealed by the Federal Land Policy and Management Act of 1976, effective Oct. 21, 1976, where the sale has not been held by this date. The filing of a public sale application creates no rights under sec. 701(a) of FLPMA which prevent BLM

VALID EXISTING RIGHTS--Continued

from exercising its discretion to dismiss the application.

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

Sec. 4 of the Federal Coal Leasing Amendments Act of 1975 removes the authority of the Secretary to grant extensions of coal prospecting permits, subject to valid existing rights, and applies to applications for permit extensions pending at the time the law was enacted by Congress. Such pending applications are not valid existing rights under sec. 4 of the 1975 Amendments Act because the authority to grant coal prospecting permit extensions was discretionary with the Secretary.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978)
85 I.D. 161

Thomas C. Woodward, 35 IBLA 262 (May 31, 1978)

Virgil V. Peterson and Hiko Bell Mining & Oil Co., 37 IBLA 18 (Sept. 12, 1978)

A delay in taking action on an application for extension of a coal prospecting permit while the Secretary formulates a new leasing policy does not violate the Administrative Procedure Act, 5 U.S.C. § 555(b) (1976), nor does it constitute an abuse of discretion which would create any rights not authorized by law. No hearing is required when the facts of a case are not in dispute and the only issues are questions of law.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

Without adequate proof of a tender of a notice of location or application to purchase a headquarters site which was wrongfully denied by Bureau of Land Management personnel prior to a withdrawal of the land, the mere occupancy of land prior to the withdrawal did not create a "valid existing right" excepted from the effect of the withdrawal, and an application to purchase a headquarters site filed after the withdrawal is properly rejected.

Rene P. Lamoureux d/b/a Frenchy Lamoureux, 39 IBLA 36 (Jan. 15, 1979)

Rights may be established by occupancy of a trade and manufacturing site on vacant, unappropriated public domain in Alaska and filing of a notice of location thereof, despite a prior survey pursuant to a petition for survey of townsite lands, when the notice of location and occupancy of the claim for trade and manufacturing precedes settlement and occupancy under the townsite laws.

Carl A. Ling, 40 IBLA 63 (Mar. 16, 1979)

VESTED RIGHTS

The filing of an application for a special land use permit does not vest in the applicant any rights which preclude the Bureau of Land Management from requiring compliance with fee assessments adopted after the date of such filing but before issuance of the permit. In the absence of a provision that pending applications are to be exempted from the effects of the change in

VESTED RIGHTS--Continued

fee requirements, the applicant must comply with the fee assessment in effect at the time of the issuance of the special land use permit.

An applicant's special land use permit application does not fall within the "firm commitment" exception of a Bureau of Land Management instruction memorandum requiring revised fee assessments for off-road vehicle (ORV) permits where, subsequent to issuance and notice of the memorandum, the application is still in the preliminary processing stage requiring additional pre-event meetings, the applicant's acceptance of special stipulations, and further staff investigation and review before approval; however, the case will be remanded for further consideration where the District Office decision does not determine whether the application falls within the memorandum exception which permits the honoring of "negotiations which have progressed too far to negate."

Walt's Racing Ass'n, 18 IBLA 359 (Jan. 30, 1975)

The rejection of an application for the purchase of land under the Recreation and Public Purposes Act does not violate the tenets of due process since the disposition of the application is at the discretion of the Department, and the applicant has acquired no vested right protected by the United States Constitution.

Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182 (Oct. 7, 1975)

An applicant's special land use permit application does not fall within a Bureau of Land Management instruction memorandum exception which permits the honoring of past "negotiations which have progressed too far to negate," in lieu of the new revised fee assessment required by the memorandum for off-road vehicle events, where at the time of issuance and notice of the memorandum only preliminary negotiations had occurred which could still be negated.

Walt's Racing Ass'n, 22 IBLA 238 (Oct. 22, 1975)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

William E. Martin, 24 IBLA 271 (Mar. 30, 1976)

An application for a phosphate prospecting permit is properly rejected when the lands applied for have been classified as containing deposits of oil shale. The lands are thereby subjected to the withdrawal from leasing and other disposal imposed by Executive Order No. 5327. Rejection of the application is required even though the application was filed prior to the oil shale classification and withdrawal.

Thomas E. Gaynor, 24 IBLA 320 (Apr. 20, 1976)

APPLICATIONS AND ENTRIES--Continued

VESTED RIGHTS--Continued

The holder of equitable title has a vested interest: *i.e.*, that interest, acquired by a party when all prerequisites for the acquisition of title have been complied with, which, attaching to the land, deprives Congress of its power to dispose of the property.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976)
83 I.D. 619

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Estate of Malcolm W. McKinnon, 31 IBLA 290 (July 22, 1977)

Gulf Oil Corp., 32 IBLA 13 (Aug. 29, 1977)

"Valid Existing Right." An application for modification of a coal lease filed prior to enactment of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C.A. § 203 (Supp. 1977), is insufficient to establish a "valid existing right" excepted from the acreage limit on lease modifications imposed by the amendment.

Nevada Power Co., 36 IBLA 62 (June 30, 1978)

The filing of an application does not itself create a vested property interest or right. It creates at most merely a hope or expectation.

Southern California Motorcycle Club, Inc., Sierra Club, 42 IBLA 164 (Aug. 17, 1979)

APPRAISALS

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

Where the current fair market value of land has been determined in accordance with accepted appraisal procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

George D. Jackson, 20 IBLA 253 (May 16, 1975)

APPRAISALS--Continued

Where a decision fixes a small tract rental derived from an appraisal report which does not comport with Departmental standards, the decision will be set aside and the case remanded for a new appraisal to establish the fair rental value.

Junction Oil Co., Inc., 21 IBLA 78 (June 25, 1975)

Where an appraisal has followed established criteria in calculating the fair-market value of rental for a right-of-way, it will be affirmed, absent a showing by positive and substantial evidence that the appraisal is in error.

Western Slope Gas Co., 21 IBLA 119 (July 14, 1975)

A notification to a small tract lessee, which was authorized by a memorandum of the Director, Bureau of Land Management, dated Oct. 19, 1955, and approved by the Secretary of the Interior on Nov. 9, 1955, that the lessee could purchase the tract under lease without constructing the improvements required in the option to purchase clause of the lease, if he paid the appraised price shown on the lease within a set time, was an offer to sell the tract by the United States, and exercise of the option by the lessee created a binding contract. Where issuance of the patent was delayed for years because of the contest of a conflicting mining claim, reappraisal to determine changed value since that time is not permissible because there was a binding contract under special authority.

Abraham Epstein, 24 IBLA 195 (Mar. 19, 1976)

Under 43 CFR 2802.1-7(e), which provides that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Under 602 DM 1.3, standards for evaluating easements granted by the Department are set forth in Interagency Land Acquisition Conference, *Uniform Appraisal Standards for Federal Land Acquisitions*.

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communications sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is a proper method of determining the fair market value of such site where there is sufficient comparable data available.

Under 43 CFR 2802.1-7(e), a revision of charges for use and occupancy of a microwave communication site should be based upon the physical condition of the right-of-way at the time the user properly commenced occupancy of the site or at time of grant thereof, whichever was earlier, with value adjusted to present value in that condition.

"Highest and best use." As to the improver of a communication site during the term of his grant, a determination that the highest and best use of property is for communications purposes must be based on evidence showing it is so reasonably likely the site would be chosen for use as a communication site in the absence of improvements made by the improver that the suitability of the land for communications purposes would affect its general market value.

"Before and after rule." In reappraisal of a communication site, the before and after rule is applied by determining the market value of the Government tract including the site at the time of reappraisal, excluding any enhancement to or diminution from the site project, and subtracting therefrom the market value of the remaining Government property interest, including enhancement or diminution from the project.

In the absence of better evidence of comparable leases, the "before and after" method should be employed in appraisals of communication sites under 43 CFR 2802.1-7.

In a case where a substantial increase is proposed in charges for a communication site under 43 CFR 2802.1-7(e), the required hearing should be conducted in accordance with the accepted concepts of due process.

American Telephone and Telegraph Co. et al., 25 IBLA 341 (June 30, 1976)

Under 43 CFR 2802.1-7(e), which provides that charges for a right-of-way on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Paradise Oil, Water and Land Development, Inc., 26 IBLA 374 (Sept. 8, 1976)

Under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7(a), an applicant has no right to a hearing in connection with original charges for use and occupancy of a communication site, and a hearing pursuant to a request under 43 CFR 4.415 will not be granted where applicant fails to make specific allegations or offer specific proof to show in what factors a Departmental appraisal is in error.

Without convincing evidence that charges prescribed under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7 for use and occupancy of a communication site are excessive, charges properly prescribed by an authorized officer will be sustained on appeal.

Departmental regulation 43 CFR 2802.1-7 contemplates that a charge will be initially established for the entire term of the grant of a communication site right-of-way.

Mountain States Telephone and Telegraph Co., 26 IBLA 393 (Sept. 16, 1976)
83 I.D. 332

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures, and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Junction Oil Co., Inc., 28 IBLA 183 (Dec. 6, 1976)

One challenging the accuracy of an appraisal of water based on fair market value must show by substantial evidence the nature of the alleged error; where the appraisal has been conducted in accordance with generally accepted appraisal principles, allegations of error unsupported by evidence will be given little weight.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977)
84 I.D. 87

Where the current fair rental value of a right-of-way has been determined in accordance with accepted appraisal procedures, and the permittee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Four States Television, Inc., 32 IBLA 205 (Sept. 19, 1977)

Under 43 CFR 2802.1-7(e), the charge for a right-of-way on public lands may be revised upon compliance with procedural requirements at any time 5 years or more from the date when the rate was initially established.

XYZ Television, Inc., 32 IBLA 317 (Sept. 30, 1977)

An applicant has no right to a hearing in connection with original Federal charges for use and occupancy of a communication site, and in the absence of any specific assertion showing error in the appraisal, the appraisal will be sustained on appeal if it is properly formulated.

When a parcel of land is properly determined to have a highest and best use for communication site purposes, an annual use charge based on the fair market value of the right-of-way grant may be determined by comparison with value of the right of use for similar sites and by making whatever adjustments may be necessary because of differences in factors influencing value.

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

A Bureau of Land Management appraisal from which the annual rental for a special use permit is calculated will be upheld unless the permittee shows by substantial and positive evidence, specific errors in the method or facts on which the appraisal is based.

Evidence that Forest Service land has been appraised at lower values and leased at lower rates than allegedly comparable Bureau of Land Management land will not suffice to overturn the latter's practices where no specific error in its methods has been shown.

Where a permittee introduces an alternative comparative sales analysis in opposition to that of the Bureau of Land Management, he must show by substantial and positive evidence why his analysis is valid and the Bureau of Land Management's invalid. Where the issue rests on the assertion of each party's expert on the validity of his respective analysis and the record fails to contain evidence by which this deadlock can be resolved, the case will be remanded for further factfinding.

Michael S. Deering, 33 IBLA 142 (Dec. 19, 1977)

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, a hearing will not be ordered and an appraisal will not be disturbed in the absence of an offer of specific substantial evidence that the determination is incorrect.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

APPRAISALS--Continued

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. Where an appellant has raised sufficient doubt that the Bureau properly considered the highest and best use of a right-of-way in determining comparability of other sites as a basis for the use charges, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but are only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Interest may be imposed on use charges for right-of-way sites depending on considerations of fairness and equity. In the absence of contrary directives, interest may be imposed for occupancy of a site where use charges should have been imposed at the same rate as past permitted use. Also, interest may be imposed on increased charges due on an annual basis for the years prior to payment of such amount.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, payments for use of right-of-way sites should be on an annual basis at the fair market value unless the annual payment would be less than $100. Therefore, although lands may be appraised for a longer future period of time, lump-sum payments for future years may not be demanded for amounts exceeding the statutory amount; instead charges for such amounts should be made on an annual basis.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. Where an appellant has raised sufficient doubt that the Bureau properly considered the highest and best use of a right-of-way in determining comparability of other sites as a basis for the use charges, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but may be only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Interest may be imposed on use charges for right-of-way sites depending on considerations of fairness and equity. In the absence of contrary directives, interest may be imposed for occupancy of a site where use charges should have been imposed at the same rate as past permitted use. Also, interest may be imposed on increased charges for the period commencing with the date from which increased charges are established.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1764(g) (West Supp. 1978), payments for use of right-of-way sites should be on an annual basis at the fair market value unless the annual payment would be less than $100. Therefore, although lands may be appraised for a longer future period of time, lump-sum payments for future years may not be demanded for amounts exceeding the statutory amount; instead charges for such amounts should be made on an annual basis.

Donald R. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

APPROPRIATIONS
(See also Expenditures, Funds--if included in this Index.)

The denial of a private landowner's request that the Bureau of Land Management share in the expenses of constructing a fence between Federal and private land will be upheld where the landowner has failed to show a valid legal or factual reason for granting the request.

John L. Tims and Ruth C. Blomgren, 30 IBLA 317 (June 6, 1977)

ASSISTANT SECRETARIES OF THE INTERIOR

A decision by the Bureau of Land Management canceling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

Blue Star, Inc., Atomic Western, Inc., Fremont Energy Corp., Ivor Adair, 41 IBLA 333 (July 11, 1979)

ATTORNEYS

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by a person who does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

W. Duane Kennedy, 24 IBLA 152 (Mar. 10, 1976)

Although respondent in a grazing license trespass hearing brought by the Bureau of Land Management has the right to be represented and aided by legal counsel, the Department has no duty or responsibility under the Constitution or the Administrative Procedure Act to provide such counsel for him.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

Service of a document upon a person's attorney of record constitutes effective service upon such person.

U.S. v. Hite Development Corp. et al., 27 IBLA 238 (Oct. 18, 1976)

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

United States v. John Gavanich, 36 IBLA 111 (July 14, 1978)

The Department has determined that an official of the Bureau of Indian Affairs is not entitled to represent a Native allotment applicant in an appeal to the Board of Land Appeals. However, where the case involves the propriety of proofs submitted by the Bureau of Indian Affairs in behalf of a deceased Native allotment applicant, that issue may be resolved.

Ernest L. Olson, Jr. (Deceased), 41 IBLA 179 (June 22, 1979)

The Department has determined that an official of the Bureau of Indian Affairs is not entitled to represent a Native allotment applicant in an appeal to the Board of Land Appeals. However, where the partial rejection of an Alaska Native allotment application turns on the resolution of a factual issue, the case will be remanded to BLM so that heirs or claimants to the estate of the deceased applicant may be afforded notice and opportunity for hearing.

Unknown Heirs of Migley Kelly, 41 IBLA 387 (July 24, 1979)

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. Howard D. Long, Dolores M. Killion, 43 IBLA 150 (Sept. 28, 1979)

AUTHORITY TO BIND GOVERNMENT

The United States is not estopped to assert title to, survey, or deny the swamp and overflowed character of public lands constituting offshore islands in Florida either by Departmental inaction on the State's swampland application, or by inclusion of the islands in a swampland selection list, or by the survey protestants' adverse chain of title and claims of occupancy and use.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

Assertions, even if established, that employees of the Bureau of Land Management assured an oil and gas lessee that drilling a leasehold on the last day of the lease term was sufficient, without more, to extend the lease, and that the lessee relied upon such representations, afford the lessee no relief. Rights not authorized by law cannot be acquired through misinformation given by employees of the Bureau of Land Management.

Charles M. Goad, 25 IBLA 130 (June 7, 1976)

Reliance upon erroneous information provided by employees of the Bureau of Land Management cannot create any rights not authorized by law. The fact that a coal prospecting permittee alleges he was assured by BLM employees that he would receive permit extensions does not prevent the applicability of subsequent legislation which prohibits such extensions from causing his extension applications to be rejected.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978)
85 I.D. 161

The burden of signing and fully executing a drawing entry card rests on the applicant. Reliance on instructions provided by a non-governmental filing service does not excuse the failure to fully execute a card.

Walter D. Moore, Jr., 41 IBLA 95 (June 4, 1979)

AVULSION

Where one who protests the performance and acceptance of a survey of land, identified by the cadastral engineer making the survey as public domain land, offers probative evidence that changes arose because of avulsion rather than accretion and so the land is not in fact Federally owned, a hearing will be ordered to receive and consider such evidence and to ascertain the facts.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

Submerged and filled tidelands passed to the State of Alaska on the date of its admission to the Union, Jan. 3, 1959. Ownership of tidelands subsequently created by avulsive action remains in those persons or entities, including the Federal Government, who held title to the land prior to the avulsive action.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 56 (June 3, 1976)

AVULSION--Continued

Federal law determines the legal characterization of accretions, avulsions, and relictions to land riparian to navigable bodies of water, where title to the land or reserved interests in the land remains in the United States.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

BONNEVILLE POWER ADMINISTRATION

GENERALLY

The Bonneville Power Administrator has authority to undertake or fund a study or project to help restore the Columbia River anadromous fishery if he finds that such a study or project is necessary or appropriate to carry out his power marketing responsibilities under the Bonneville Project Act, 16 U.S.C. §§ 832-832l, and other related statutes.

Authority of Bonneville Power Administrator to Participate in Funding of Program to Help Restore the Columbia River Anadromous Fishery, M-36885 (Nov. 22, 1976)
83 I.D. 589

BOUNDARIES
(*See also* Accretion, Avulsion, Reliction, Surveys of Public Lands--if included in this Index.)

Where one who protests the performance and acceptance of a survey of land, identified by the cadastral engineer making the survey as public domain land, offers probative evidence that changes arose because of avulsion rather than accretion and so the land is not in fact Federally owned, a hearing will be ordered to receive and consider such evidence and to ascertain the facts.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

The survey of an offshore island without the use of 18.6-year mean high tide data, which governs boundary disputes between private upland and tideland owners, is proper; the 18.6-year lunar cycle tide data does not govern meander lines established in public land surveys.

Meander of an offshore island is ordinarily based on a mean high tide determined by the vegetative line upon the soil in accordance with the Bureau of Land Management's *Manual of Surveying Instructions*.

The Secretary of the Interior is authorized and under a duty to determine what lands are public lands and to survey such lands. Neither the Acts admitting Florida into the Union, nor the Reconstruction Act of Mar. 2, 1867, divested the Secretary of the Interior of that authority regarding islands in the State of Florida, nor divested the United States of title to any public lands in the State.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

Courts have long recognized, in determining boundaries, that calls for natural objects and fixed monuments control those for distances.

Taos Pueblo Tract C, M-36888 (Oct. 28, 1976)
83 I.D. 529

BOUNDARIES--Continued

In determining what land is conveyed under patents or grants of public land bordering a meandered watercourse, the general rule is that the waterline itself, not the meander line, constitutes the boundary. There is an exception where the meander line may constitute the boundary between lands omitted from the survey and the watercourse if fraud or gross error is shown in the survey. This exception is only applicable to limit the boundary of the surveyed lots on the side of the watercourse where the omitted land is shown. It does not apply to a lot on the opposite side of the watercourse from the omitted land so as to pass title to the omitted land with title to the lot on the opposite side. The waterline would remain the actual boundary of that lot.

Extrinsic evidence may be used to make definite the description in a private deed which contains a latent ambiguity, either to determine actual or color of title. Therefore, a color of title claimant may introduce extrinsic evidence to establish whether the deeds in her chain of title were based upon plats, records and other documents which can be read together with the deeds as creating a color of title beyond the actual title shown on an official Federal survey plat.

Nels N. Barlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

The primary rule which the courts apply in construing and interpreting a conveyance where the location of the boundary lines is uncertain by reason of inconsistent or conflicting descriptive calls in the conveyance is that the intention of the parties controls and is to be followed. Where the calls for the location of boundaries to land are inconsistent, calls to monuments, natural or artificial, are of paramount importance and will prevail over all other calls inconsistent therewith. Calls to boundaries are of secondary importance, and courses and distances must be altered if, as given, they will not reach the designated boundary. Calls of course take precedence over distances, so that where it is necessary to either change direction to reach a boundary or else reduce or extend the prescribed distance, the distance must yield to the course. The recital of quantity or area of land conveyed or retained will be least influential.

United States v. Leroy S. Johnson et al., 39 IBLA 337 (Feb. 28, 1979)

BUREAU OF INDIAN AFFAIRS
(*See also* Indian Probate--if included in this Index.)

GENERALLY

Appellant's pending court action does not present a bar to further agency review.

Administrative Appeal of Helen S. Kirschling v. Bureau of Indian Affairs, 7 IBIA 36 (Mar. 17, 1978)

Title I of the Highway Beautification Act, 79 Stat. 1028, which applies to all "public lands or reservations of the United States," does not apply to Indian reservations.

California's Outdoor Advertising Act, implementing the Highway Beautification Act, 79 Stat. 1028, may not be applied to non-Indian lessees on the Morongo Indian Reservation.

The Department's policy established in 1965 of requiring lessees of Indian lands in California to comply with State standards regulating land use and development can be achieved without subjecting developing tribal governments to the full enforcement powers of

BUREAU OF INDIAN AFFAIRS--Continued

GENERALLY--Continued

the State, viz., through adding appropriate State standards to the provisions of any lease.

Administrative Appeal of the Morongo Band of Mission Indians v. Area Director, Sacramento Area Office, 7 IBIA 299 (Dec. 13, 1979) 86 I.D. 680

ADMINISTRATIVE APPEALS

Generally

Administrative appeals decided by the Commissioner of Indian Affairs under 25 CFR Part 2 on the basis of an exercise of discretionary authority should contain in the written decision a statement that the decision is based on the exercise of discretionary authority and that the decision is final for the Department.

It is not the function of the Board of Indian Appeals to review discretionary determinations of the Commissioner of Indian Affairs.

Administrative Appeal of Means Construction Co. et al. v. Commissioner of Indian Affairs, 5 IBIA 242 (Nov. 5, 1976)

All owners of interest in property are "interested parties" within the meaning of 25 CFR 2.11. It was therefore improper for appellant to serve a copy of her notice of appeal only on those persons whom she considered to be "adverse parties."

Notwithstanding that the notice of appeal is to be served on all interested parties, failure to do so does not make dismissal of the appeal mandatory.

Administrative Appeal of Iris Bear Heels v. Aberdeen Area Director, 6 IBIA 253 (Dec. 15, 1977)

The party challenging the terms or conditions of a sale of Indian land bears the burden of proving the violation or misconduct alleged.

Administrative Appeal of Hazel Hawk Visser v. Area Director, Portland Area Office, Bureau of Indian Affairs, 7 IBIA 22 (Feb. 17, 1978)

Determining the reasonableness of administrative fees assessed under authority of 25 CFR 141.18 is a matter requiring the exercise of discretionary authority and as such the issue must be directed to the Assistant Secretary for Indian Affairs for resolution.

The Board of Indian Appeals may not resolve a discretionary matter without clear authority from the Secretary.

Administrative Appeal of Helen S. Kirschling v. Bureau of Indian Affairs, 7 IBIA 36 (Mar. 17, 1978)

Acts of Agents of the United States

Limitation on Authority to Act

Generally

Mailing to the Bureau of Indian Affairs a carbon copy of a decision rejecting an application for an Alaska Native allotment is not service upon the applicant so as to comply with 43 CFR 4.401.

Gust J. Heft, Sr., 42 IBLA 86 (Aug. 13, 1979)

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Acts of Agents of the United States--Continued

Limitation on Authority to Act--Continued

Contracts Express or Implied in Fact

The limitation that the United States is bound only by acts of agents which are within his authority applies not only to express contracts but to contracts implied in fact as well.

Administrative Appeal of Doyon, Ltd., 7 IBIA 63 (Aug. 8, 1978)

Notice of Limitation on Authority

Persons dealing with an agent of the United States are charged with notice of limitation on his authority and that the United States is bound only by acts of an agent which are within his authority.

Administrative Appeal of Doyon, Ltd., 7 IBIA 63 (Aug. 8, 1978)

Filing

Mandatory Time Limit

The appellant shall file his appeal with the Area Director or the Assistant Secretary (formerly Commissioner) for Indian Affairs within 30 days after filing of the notice of appeal in the office of the official who made the decision being appealed.

Benson-Montin-Greer Drilling Corp. v. Acting Area Director, Albuquerque Area Office, Bureau of Indian Affairs, 7 IBIA 67 (May 31, 1978)

BUREAU OF LAND MANAGEMENT

(*See also* Mineral Leasing Act--if included in this Index.)

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, the authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Hydrothermal Energy and Minerals, Inc., 18 IBLA 393 (Feb. 7, 1975) 82 I.D. 60

Hydrothermal Energy and Minerals, Inc., 19 IBLA 136 (Mar. 6, 1975)

Delta Funds, Inc., 19 IBLA 185 (Mar. 18, 1975)

The Bureau of Land Management has no authority to make a determination of a known geothermal resources area; such authority rests with the Geological Survey.

Robert C. Harper, 24 IBLA 44 (Feb. 23, 1976)

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess et al., 27 IBLA 4 (Sept. 17, 1976)

Where a protest has been made against the validity of a drawing entry card (DEC) in the simultaneous oil and gas lease filing procedure, it is improper to issue a lease in response to the protested DEC before the protest is finally dismissed. The Board of Land Appeals, rather than a BLM State Office, has the authority to make final administrative determinations for the Department in matters relating to protests against oil and gas lease offers.

D. E. Pack, 31 IBLA 283 (July 22, 1977)

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

An organization appealing a Bureau of Land Management decision will be considered a "party to a case" within the meaning of 43 CFR 4.410 where the organization uses the lands in question, is recognized as a bona fide representative of the community, receives notice of Bureau actions concerning the lands, actively and extensively participates in the formulation of land use plans for the lands in question, and takes a position in a dispute concerning the use of the land contrary to another group or individual.

Headwaters, 33 IBLA 91 (Dec. 16, 1977)

Established and longstanding Departmental policy relating to the administration of the simultaneous oil and gas leasing system is binding on all employees of the Bureau of Land Management, until such time as it is properly changed.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39 (Sept. 18, 1978) 85 I.D. 380

Erroneous issuance by BLM of oil and gas lease on other withdrawn land in area of tract for which appellant submitted lease offer does not effect restoration to leasing of latter withdrawn tract.

E. M. Tully, 39 IBLA 137 (Jan. 29, 1979)

Where the Secretary has declined to exercise his jurisdiction, a decision rendered by this Board is final for the Department. Hence, statements by BLM and arguments of the Solicitor, while valuable to the Board, are not binding upon the Board.

H. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

Established and longstanding Departmental policy relating to the administration of the simultaneous oil and gas leasing system, premised upon regulatory interpretation, is binding on all employees of the Bureau of Land Management, until such time as it is properly changed.

Milton D. Feinberg, Benson J. Lamp (On Reconsideration), 40 IBLA 222 (Apr. 11, 1979) 86 I.D. 234

The filing of a timely protest suspends the authority of the State Office to act upon the matter until the protest has been ruled upon. Further, action is to be additionally suspended after a ruling on the protest for the period of time in which a person adversely affected may file a notice of appeal therefrom.

James W. Smith, 44 IBLA 275 (Dec. 26, 1979)

BUREAU OF RECLAMATION

GENERALLY

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the consent of the Secretary of the Interior is necessary under the Act to the leasing of the land. Where the National Park Service recommends that oil and gas leases for lands within the boundaries of the Chickasaw National Recreation Area be rejected in order to maintain the area for the purposes for which it was established, it is proper to accept this recommendation and reject the offers.

Earlfine Shear, David L. Shear, 29 IBLA 33 (Feb. 10, 1977)

The Federal reclamation laws are limited by their own terms to application in the 17 Western "reclamation states."

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act Projects, M-36904 (July 17, 1978) 85 I.D. 254

AUTHORIZATION

When Congress is relatively specific in authorizing a Government project, it takes equally specific Congressional action to change that authorization.

Certification that lands are irrigable is a separate and distinct process from authorizing a Bureau of Reclamation project and cannot be construed as authorization to serve lands in excess of those specifically authorized in the project act.

BUREAU OF RECLAMATION--Continued

AUTHORIZATION--Continued

The agencies have the responsibility in cases where authority to act may be in question to bring the matter to the direct and specific attention of Congress and to request clarifying legislation.

Congressional ratification of a significant modification in an authorized project ordinarily cannot be gained through mere references in testimony or documents presented to Congress for appropriation purposes; the intent of Congress as a whole to ratify must be clearly expressed and manifested in the record.

Sec. 9(e) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(e) (1970), does not give the Secretary any independent authority for entering water service contracts for areas except as separately authorized by Congress.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

Where there is no clear Congressional authority to operate a Bureau of Reclamation project one way as opposed to another and there are proposed inconsistent methods of operation contained in the draft set of Operating Principles and feasibility report, it is the responsibility of the agency to seek additional and clarifying authority from Congress as to how the project is to be operated, particularly when important and controversial economic and environmental interests are involved.

Authority to Divert Flows from Hunter Creek Tributaries, Fryingpan-Arkansas Project, Colorado, M-36902 (July 31, 1978) 85 I.D. 326

The Secretary of the Interior has discretion to modify the physical features or plans of a Bureau of Reclamation project after Congressional authorization when the authorizing legislation only states what the general features of the project are to be and does not specifically incorporate any detailed feasibility report into the legislation. The Secretary cannot, however, deviate from the general plans or facilities specifically defined by Congress to be part of the project without obtaining the approval of Congress.

When Congress places a cost ceiling in legislation authorizing construction of a project, the agency must obtain additional authority from Congress to continue construction of the project if it is projected that the cost ceiling will be exceeded.

The Bureau of Reclamation is required to seek additional Congressional authority to continue a project at the earliest point in time that it determines the authorized cost ceiling will be exceeded so that Congress can determine whether the project should be completed at the increased cost.

Adequacy of Legislative Authorization for the San Felipe Division, Central Valley Project, California, M-36903 (July 31, 1978) 85 I.D. 337

CONSTRUCTION

Where there is no clear Congressional authority to operate a Bureau of Reclamation project one way as opposed to another and there are proposed inconsistent methods of operation contained in the draft set of Operating Principles and feasibility report, it is the responsibility of the agency to seek additional and clarifying authority from Congress as to how the project is to be operated, particularly when important

BUREAU OF RECLAMATION--Continued

CONSTRUCTION--Continued

and controversial economic and environmental interests are involved.

Authority to Divert Flows from Hunter Creek Tributaries, Fryingpan-Arkansas Project, Colorado, M-36902 (July 31, 1978) 85 I.D. 326

The Secretary of the Interior has discretion to modify the physical features or plans of a Bureau of Reclamation project after Congressional authorization when the authorizing legislation only states what the general features of the project are to be and does not specifically incorporate any detailed feasibility report into the legislation. The Secretary cannot, however, deviate from the general plans or facilities specifically defined by Congress to be part of the project without obtaining the approval of Congress.

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Adequacy of Legislative Authorization for the San Felipe Division, Central Valley Project, California, M-36903 (July 31, 1978) 85 I.D. 337

ENVIRONMENT

The requirement for a permit under sec. 404 of the Federal Water Pollution Control Act applies to the Bureau of Reclamation to the same extent as any other person, and with certain exceptions the Bureau must obtain a permit from the Corps of Engineers prior to any discharge of dredged or fill material into the navigable waters.

Activities "affirmatively authorized by Congress," which are excepted from sec. 10 of the Rivers and Harbors Act of 1899, are not excepted from sec. 404 of the Federal Water Pollution Control Act. Notwithstanding the exception of a discharge of dredged or fill material under sec. 10 of the Rivers and Harbors Act, compliance with sec. 404 is required.

A permit under sec. 404 of the Federal Water Pollution Control Act is required for the discharge of dredged or fill material whenever: (a) the "discharge" constitutes any addition of any pollutant to navigable waters from any discernible, confined and discrete conveyance, including the placement of fill and the building of any structure or impoundment; and (b) the "dredged material" is dredged spoil that is excavated or dredged from the waters of the United States; or (c) the "fill material" includes any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body, including any structure which requires rock, sand, dirt or other material for its construction; and (d) the discharge is made into "waters of the United States," which extend beyond those waters meeting the traditional tests of navigability to those encompassed by the broadest possible constitutional interpretation.

To secure the exemption under sec. 404(r) of the Federal Water Pollution Control Act for projects described in an environmental statement, compliance with seven specific

BUREAU OF RECLAMATION--Continued

ENVIRONMENT--Continued

conditions is required. The exemption does not apply to the maintenance of existing Federal projects, but only to new construction. While the exemption provides an alternative procedure to achieve compliance with sec. 404 of the Act for a limited category of Federal projects under very specific conditions, it does not lessen the substantive requirements that apply to the discharge of dredged or fill material.

To secure the exemption under sec. 404(f)(1) of the Federal Water Pollution Control Act for the maintenance of currently serviceable structures, compliance with four specific conditions is required. The exemption does not apply to the discharge of dredged material incident to maintenance dredging, or to new construction.

Permit Requirements for Discharge of Dredged or Fill Material Under Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. § 1344, M-36915 (Aug. 27, 1979) 86 I.D. 400

EXCESS LANDS

Congress intended to replace the excess land provisions of the general reclamation laws when it passed the SRPA by providing in sec. 5(c) thereof that excess landowners could receive Federally subsidized water on their excess holdings if they would repay with interest "a pro rata share of the loan which is attributable to furnishing irrigation benefits * * * to land held * * * in excess of 160 acres."

Where lands are receiving benefits from both an SRPA loan project and an ordinary reclamation project, general reclamation law, including residency and acreage limitations, apply to those lands.

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act Projects, M-36904 (July 17, 1978) 85 I.D. 254

Sec. 46 of the Omnibus Adjustment Act of 1926, 43 U.S.C. § 423e (1976), requires the Secretary of the Interior to control and approve the purchase price of both initial sales of excess land, and resales of this formerly excess land until one-half the construction charges allocated to such land has been paid, in order for the land to continue to be eligible for project water.

In approving the sale price of formerly excess land until one-half the construction charges allocated to such land has been paid, the Secretary of the Interior is required to use the same standard used for approving the sale price of the initial sale of excess land; that is, the sale price must be fixed by the Secretary on the basis of the actual bona fide value of the land on the date of appraisal without reference to the value added by the project. The price approval requirement will not apply to formerly excess lands which were acquired, with Secretarial approval, from excess into non-excess status prior to May 18, 1979, the date of this opinion.

Reclamation Law - Control of the Sale Price of Formerly Excess Lands, M-36913 (May 18, 1979)
86 I.D. 306

FINDINGS OF FEASIBILITY

The Secretary of the Interior has discretion to modify the physical features or plans of a Bureau of Reclamation project after Congressional authorization when the authorizing legislation only states what the general features of the project are to be and does not specifically incorporate any detailed feasibility report into the legislation. The Secretary cannot, however, deviate from the general plans or facilities specifically

BUREAU OF RECLAMATION--Continued

FINDINGS OF FEASIBILITY--Continued

defined by Congress to be part of the project without obtaining the approval of Congress.

Adequacy of Legislative Authorization for the San Felipe Division, Central Valley Project, California, M-36903 (July 31, 1978) 85 I.D. 337

OPERATION AND MAINTENANCE

Where there is no clear Congressional authority to operate a Bureau of Reclamation project one way as opposed to another and there are proposed inconsistent methods of operation contained in the draft set of Operating Principles and feasibility report, it is the responsibility of the agency to seek additional and clarifying authority from Congress as to how the project is to be operated, particularly when important and controversial economic and environmental interests are involved.

Authority to Divert Flows from Hunter Creek Tributaries, Fryingpan-Arkansas Project, Colorado, M-36902 (July 31, 1978) 85 I.D. 326

REPAYMENT AND WATER SERVICE CONTRACTS

A short-term or temporary contract will not rescind a long-term contract under the doctrine of superseding contracts unless the parties clearly intended that to be the effect of the new agreement and the terms of the new agreement are flatly inconsistent with the former agreement.

Sec. 9(e) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(e) (1970), does not give the Secretary any independent authority for entering water service contracts for areas except as separately authorized by Congress.

No water may be delivered to a reclamation district until the district has signed a repayment contract which establishes a sufficient repayment obligation guaranteeing that the United States will recover the costs of the project as provided by law.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

RESIDENCY REQUIREMENTS

Even though Congress stated that the SRPA was to be a supplement to the reclamation law, SRPA's legislative history indicates that the Act was not intended to include the remainder of reclamation law, including the residency requirement.

Where lands are receiving benefits from both an SRPA loan project and an ordinary reclamation project, general reclamation law, including residency and acreage limitations, apply to those lands.

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act Projects, M-36904 (July 17, 1978) 85 I.D. 254

SMALL PROJECTS PROGRAM

The Small Reclamation Projects Act (SRPA), 43 U.S.C. § 422a *et seq.* (1970), has two principal objectives: (1) to provide more direct involvement of non-Federal

BUREAU OF RECLAMATION--Continued

SMALL PROJECTS PROGRAM--Continued

public agencies in water development, and (2) to simplify the authorization procedures for smaller projects.

The SRPA does not incorporate general reclamation law.

Congress intended to replace the excess land provisions of the general reclamation laws when it passed the SRPA by providing in sec. 5(c) thereof that excess landowners could receive Federally subsidized water on their excess holdings if they would repay with interest "a pro rata share of the loan which is attributable to furnishing irrigation benefits * * * to land held * * * in excess of 160 acres."

When those provisions of reclamation law which are specifically incorporated by SRPA are added to the provisions of SRPA itself, they form a complete scheme which is capable of standing by itself without need to incorporate the general body of reclamation law.

Even though Congress stated that the SRPA was to be a supplement to the reclamation law, SRPA's legislative history indicates that the Act was not intended to include the remainder of reclamation law, including the residency requirement.

Where lands are receiving benefits from both an SRPA loan project and an ordinary reclamation project, general reclamation law, including residency and acreage limitations, apply to those lands.

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act Projects, M-36904 (July 17, 1978) 85 I.D. 254

CLASSIFICATION AND MULTIPLE USE ACT OF 1964

When a Native has initiated use and occupancy of land *prior* to the date of its classification under the Classification and Multiple Use Act of 1964, such classification will not constitute a bar to the completion of the statutory 5-year use and occupancy period, and the allotment may be granted, all else being regular, even though the classification remains in effect.

Katie Wassillie et al., 20 IBLA 330 (June 6, 1975)

Donald F. Nielsen, Ethel Adcox, 21 IBLA 258 (Aug. 11, 1975)

Publication in the *Federal Register* of a notice of proposed classification pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

United States v. H. B. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

CLASSIFICATION AND MULTIPLE USE ACT OF 1964--Continued

Where the Secretary by appropriate notice in the *Federal Register* has classified certain lands for multiple use management and such lands are segregated from desert land entry, and the classification has not been terminated by either a reclassification or publication in *Federal Register* of termination of classification, BLM properly denied petition-application for desert land entry.

Paul H. Jenkins, 39 IBLA 141 (Jan. 29, 1979)

Melvin V. Frandsen, Mary C. Frandsen, 43 IBLA 130 (Sept. 26, 1979)

Classification of lands under the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 *et seq.* (1970), does not create reserved water rights.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979) 86 I.D. 553

COAL LANDS

In order for an assertion of competitive interest to create a bar to the allowance of an application to modify an existing coal lease by the addition of contiguous land, the competitive interest asserted must be identifiable, substantial and genuine, and not merely speculative or casual.

Malcolm N. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

COAL LEASES AND PERMITS

GENERALLY

In order for an assertion of competitive interest to create a bar to the allowance of an application to modify an existing coal lease by the addition of contiguous land, the competitive interest asserted must be identifiable, substantial and genuine, and not merely speculative or casual.

Malcolm N. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

The Mineral Leasing Act of 1920, *as amended and supplemented*, most recently by the Coal Leasing Amendments Act of 1975, allows the Secretary to authorize development of coal leases by methods which were not utilized by the industry at the time of passage of the 1920 Act. The broad grants of authority to the Secretary in the 1920 Act allow technological developments in the coal mining industry.

The grant of the privilege to mine and dispose of all coal includes in situ methods of development.

In Situ Gasification of Coal, M-36890 (May 24, 1977) 84 I.D. 244

The Federal Coal Leasing Amendments Act of 1975, which amended sec. 2(b) of the Mineral Leasing Act, subject to "valid existing rights" terminated the Secretary's authority to extend previously granted prospecting permits.

Authority to Extend Coal Prospecting Permits: Effect of Sec. 4 of the Federal Coal Leasing Amendments Act of 1975, M-36894 (July 21, 1977) 84 I.D. 415

COAL LEASES AND PERMITS--Continued

GENERALLY--Continued

A mining plan submitted to the U.S. Geological Survey is properly classified a "new operation" as defined by 30 CFR 211.1(d)(1)(iii) where as of the date of its submission to the Department, the Department has not completed its environmental impact analysis involving the area in which the mining plan is located, nor has it, as of that date, commenced and expended substantial resources in the preparation or completion of that analysis.

Routt County Development, Ltd., 33 IBLA 130 (Dec. 19, 1977)

Reliance upon erroneous information provided by employees of the Bureau of Land Management cannot create any rights not authorized by law. The fact that a coal prospecting permittee alleges he was assured by BLM employees that he would receive permit extensions does not prevent the applicability of subsequent legislation which prohibits such extensions from causing his extension applications to be rejected.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978)
85 I.D. 161

Where a qualifying discovery of mineral has been made by a permittee during the term of a permit, a coal preference right lease application need not be rejected because it was filed after the permit expired.

Even though the Bureau of Land Management from Jan. 26, 1972, to Aug. 19, 1977, considered preference right coal lease applications in a pending status, it is not estopped to reject such applications as having been filed late because it has not been demonstrated that appellant relied on the Bureau's representations to appellant's detriment.

Thermal Energy Co. et al., 36 IBLA 334 (Aug. 28, 1978)

APPLICATIONS

Decisions rejecting coal prospecting permit applications will be affirmed where the decision was made pursuant to and in accordance with Secretarial Order No. 2952 of Feb. 13, 1973.

Utah Resources International, Inc., 18 IBLA 320 (Jan. 6, 1975)

Charlene Dickman, R. J. Hollberg, Jr., Vernon W. Dickman, 21 IBLA 397 (Aug. 28, 1975)

Rod Shepard, 22 IBLA 60 (Sept. 18, 1975)

D. C. Anderson, 23 IBLA 161 (Dec. 23, 1975)

L. A. Walstrom, Jr., 25 IBLA 186 (June 14, 1976)

Where a company requesting the Bureau of Land Management to offer coal lands for lease by competitive bidding fails to furnish the information requested by BLM so that it is impossible to determine if the Department's criteria for issuance of coal leases has been satisfied, the request for competitive lease offering will be denied.

Reliable Coal & Mining Co., 18 IBLA 342 (Jan. 13, 1975)

COAL LEASES AND PERMITS--Continued

APPLICATIONS--Continued

When a coal lease applicant asserts, on appeal, facts which may show it to be entitled to favorable consideration of its lease application under the short-term need criteria promulgated by the Department, the decision rejecting the lease application will be set aside and the case remanded for further consideration.

Idaho Power Co., 20 IBLA 125 (Apr. 28, 1975)

An application for modification of an existing coal lease to include an entire section is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Estate of Malcolm N. McKinnon, 31 IBLA 290 (July 22, 1977)

An application for modification of an existing coal lease to include an additional 361.52 acres is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Gulf Oil Corp., 32 IBLA 13 (Aug. 29, 1977)

An application for modification of a coal lease which exceeds the acreage limitation provided by the Federal Coal Leasing Amendments Act of 1975 is properly rejected notwithstanding the fact that the application was filed prior to enactment of the amendment.

The filing of an application for modification of an existing coal lease does not give rise to a vested property right. Thus, such an application qualifies as neither a valid existing right excepted from application of the acreage limit on lease modifications set by the Federal Coal Leasing Amendments Act of 1975 nor a right protected by the Fifth Amendment from application of subsequently amended statutes or regulations.

Nevada Electric Investment Co., 33 IBLA 3 (Nov. 14, 1977)

An application for an extension of a prospecting permit under the Mineral Leasing Act is not a "valid existing right" within the meaning of the savings clause of sec. 4 of the Federal Coal Leasing Amendments Act of 1975, and is not, therefore, an interest which survives the amendment of the Mineral Leasing Act.

Peabody Coal Co., 34 IBLA 139 (Mar. 10, 1978)

COAL LEASES AND PERMITS--Continued

APPLICATIONS--Continued

Where an applicant for a preference right coal lease fails to respond to a request for further information needed to process his application within a prescribed period of not less than 60 days, under 43 CFR 3521.1(g)(3), BLM properly rejected the lease application.

The failure of an applicant for a preference right coal lease to respond to a request for further information needed to process his application is not excused because he relied on a third party who failed to recognize that such action was required.

A prospecting permit for coal is properly canceled under 43 CFR 3511.4-2(a)(1) for failure to pay annual rental on or before the anniversary date, as extended. An application for a preference right coal lease is properly rejected if it is based on prospecting permits which have been canceled for failure to pay rental timely.

Cortella Coal Corp., 35 IBLA 172 (May 23, 1978)

Applications for short-term coal leases may be accepted only where it is shown that such coal is needed to maintain an existing operation or that such coal is needed as a reserve for production in the near future under the provisions of 43 CFR 3525.3-1.

Shell Oil Co., 35 IBLA 195 (May 23, 1978)

Sec. 4 of the Federal Coal Leasing Amendments Act of 1975 removes the authority of the Secretary to grant extensions of coal prospecting permits, subject to valid existing rights, and applies to applications for permit extensions pending at the time the law was enacted by Congress. Such pending applications are not valid existing rights under sec. 4 of the 1975 Amendments Act because the authority to grant coal prospecting permit extensions was discretionary with the Secretary.

The Federal coal program was substantially revised in 1975 by the Secretary in proper exercise of his discretion. The Bureau of Land Management did not act in an arbitrary and capricious manner when, under the new coal policy, it suspended applications for coal prospecting permit extensions and the applications were eventually rejected because the Federal Coal Leasing Amendments Act of 1975 removed the authority to grant coal prospecting permit extensions. A program pursued for a period of time under a statutory grant of discretionary authority may be reviewed and revised at any time provided it is not done in an arbitrary manner and is done within the authority granted by Congress.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978)
85 I.D. 161

Thomas C. Woodward, 35 IBLA 262 (May 31, 1978)

"Valid Existing Right." An application for modification of a coal lease filed prior to enactment of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C.A. § 203 (Supp. 1977), is insufficient to establish a "valid existing right" excepted from the acreage limit on lease modifications imposed by the amendment.

A decision rejecting an application for modification of a coal lease will be affirmed where the additional acreage requested exceeds the limit imposed by the Federal Coal Leasing Amendments Act of 1975 notwithstanding the fact that the application was filed prior to enactment of the amendment.

Nevada Power Co., 36 IBLA 62 (June 30, 1978)

Where a coal prospecting permittee demonstrates that lands described in its permit contain coal in commercial quantities, the permittee is entitled to consideration of a lease to such lands and its request that its coal preference right lease application be restored to its status as a pending preference right lease application may be honored.

Thermal Energy Co. et al., 36 IBLA 334 (Aug. 28, 1978)

Sec. 4 of the Federal Coal Leasing Amendments Act of 1975 removes the authority of the Secretary to grant extensions of coal prospecting permits, subject to valid existing rights, and applies to applications for permit extensions pending at the time the law was enacted by Congress. Such pending applications are not valid existing rights under sec. 4 of the 1975 Amendments Act because the authority to grant coal prospecting permit extensions was discretionary with the Secretary.

Virgil V. Peterson and Mike Bell Mining & Oil Co., 37 IBLA 18 (Sept. 12, 1978)

A delay in taking action on an application for extension of a coal prospecting permit while the Secretary formulates a new leasing policy does not violate the Administrative Procedure Act, 5 U.S.C. § 555(b) (1976), nor does it constitute an abuse of discretion which would create any rights not authorized by law. No hearing is required when the facts of a case are not in dispute and the only issues are questions of law.

Sec. 9(b) of the Administrative Procedure Act, *as amended*, 5 U.S.C. § 558(c) (1976), does not apply to coal prospecting permit extension applications because the prospecting is not an "activity of a continuing nature" within the meaning of the statute. As the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 30 U.S.C. § 201 (1976), removed the Secretary of the Interior's discretion to grant extensions, applications for preference right leases filed after expiration of the initial 2-year permit term, and during pendency of extension applications, cannot be issued.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

Where a court decree delineates specific criteria governing the issuance of Federal coal leases by the Department, the rejection of competitive coal lease applications failing to meet such criteria will be sustained on appeal.

W. E. and B. C. Somerville, 40 IBLA 9 (Mar. 9, 1979)

Where the case record contains no documentation supporting BLM's conclusion that an applicant for a coal lease does not meet emergency coal leasing criteria, and where the applicant asserts on appeal that it can produce evidence establishing that it does meet these criteria, BLM's decision rejecting the application will be vacated, and the matter will be remanded to

COAL LEASES AND PERMITS--Continued

APPLICATIONS--Continued

allow the applicant a reasonable time to provide this evidence.

Mid-Continent Coal and Coke Co., 41 IBLA 139 (June 14, 1979)

Where BLM has rejected a coal lease application because it does not meet court-ordered emergency coal leasing criteria and the record indicates that the applicant should have been given the opportunity to submit additional evidence in support of its application, the rejection will be vacated and the matter remanded to BLM to allow the applicant a reasonable time to provide this evidence. However, where as in this case, the emergency criteria are no longer in effect and regulations governing a new coal management program have been issued, BLM on remand should determine whether it should issue a coal lease to the applicant under the new program, giving the applicant an opportunity to provide additional information if necessary.

Coal Fuels-Wilde, 43 IBLA 170 (Sept. 28, 1979)

The BLM should presume the validity of mining claims or the development of mineral leases disclosed by abstracts submitted by the preference right lease applicant, and allow the applicant to pursue the remedy of private contests or, failing that, issue a notice of intent to reject the lease application where claims or development are shown, and allow the preference right lease applicant the opportunity to show, on the record, the invalidity of the claims, or lack of development, or both.

Effect and Implementation of Solicitor's Opinion M-36893 on "Unclaimed, Undeveloped," M-36893 (Supp.) (Nov. 19, 1979) 86 I.D. 627

Where BLM has rejected coal lease applications because they do not meet court ordered emergency coal leasing criteria, but the emergency criteria are no longer in effect and regulations governing a new coal management program have been issued, BLM on remand should determine whether issuance of the leases is appropriate under the new program, giving applicant an opportunity to provide additional information if necessary.

Glenn H. Johnson (On Reconsideration), 44 IBLA 247 (Dec. 19, 1979)

CANCELLATION

Where an applicant for a preference right coal lease fails to respond to a request for further information needed to process his application within a prescribed period of not less than 60 days, under 43 CFR 3521.1(g)(3), BLM properly rejected the lease application.

The failure of an applicant for a preference right coal lease to respond to a request for further information needed to process his application is not excused because he relied on a third party who failed to recognize that such action was required.

A prospecting permit for coal is properly canceled under 43 CFR 3511.4-2(a)(1) for failure to pay annual rental on or before the anniversary date, as extended. An application for a preference right coal lease is properly rejected if it is based on prospecting permits which have been canceled for failure to pay rental timely.

Corielle Coal Corp., 35 IBLA 172 (May 23, 1978)

COAL LEASES AND PERMITS--Continued

LEASES

Under 43 CFR 3524.2-1, an application to modify a coal lease without competitive bidding, to include contiguous coal deposits, will be denied if the additional lands requested can be developed as part of an independent operation or there is a competitive interest in them.

Concho Petroleum Co. and J. C. Barcher, 22 IBLA 139 (Sept. 26, 1975)

The grant of the privilege to mine and dispose of all coal includes in situ methods of development.

In Situ Gasification of Coal, M-36890 (May 24, 1977) 84 I.D. 244

An application for modification of an existing coal lease to include an entire section is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Estate of Malcolm B. McKinnon, 31 IBLA 298 (July 22, 1977)

An application for modification of an existing coal lease to include an additional 361.92 acres is properly rejected under sec. 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Gulf Oil Corp., 32 IBLA 13 (Aug. 29, 1977)

Where an application to amend a coal lease describes 480 acres, a permissible acreage when the application was filed, but the pertinent statute and the regulations in 43 CFR 3524.2-1(a) are amended to provide for modifications of existing coal leases including contiguous coal lands if the total area of such modifications does not exceed 160 acres or the same number of acres as that in the original lease, whichever is less, the application for 480 acres cannot be allowed, but the applicant will be given an opportunity to amend his application so as to cover no more than 160 acres.

Intermountain Exploration Co., 32 IBLA 170 (Sept. 13, 1977)

An application for modification of a coal lease which exceeds the acreage limitation provided by the Federal Coal Leasing Amendments Act of 1975 is properly rejected notwithstanding the fact that the application was filed prior to enactment of the amendment.

The filing of an application for modification of an existing coal lease does not give rise to a vested property right. Thus, such an application qualifies as neither a valid existing right excepted from application of the acreage limit on lease modifications set

COAL LEASES AND PERMITS--Continued

LEASES--Continued

by the Federal Coal Leasing Amendments Act of 1975 nor a right protected by the Fifth Amendment from application of subsequently amended statutes or regulations.

Nevada Electric Investment Co., 33 IBLA 3 (Nov. 18, 1977)

Under 43 CFR 3522.2-1(a), a proposed readjustment of a coal lease should not be appealed directly to the Board of Land Appeals under 43 CFR 4.410, but, rather, a lessee's objections thereto should first be referred to and acted upon by the State Office, Bureau of Land Management.

California Portland Cement Co., 33 IBLA 223 (Dec. 28, 1977)

The Secretary of the Interior has authority to reject a request to modify a coal lease by adding 160 acres to it where the record discloses a rational basis for the conclusion that the acreage sought is capable of being developed as part of an independent operation.

The Geological Survey is the Secretary's technical expert in matters concerning coal permits and leases and the Secretary is entitled to rely on its reasoned analysis.

Where a request to modify a coal lease by adding acreage to it is rejected by the BLM solely on the basis of conclusory statement of the Geological Survey that the area applied for is capable of being developed as part of an independent operation and the factual basis for that conclusion does not appear in the record, the decision will be set aside and the case remanded for the compilation of a more complete record and readjudication of the request.

Intermountain Exploration Co., 35 IBLA 15 (May 4, 1978)

"Valid Existing Right." An application for modification of a coal lease filed prior to enactment of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C.A. § 203 (Supp. 1977), is insufficient to establish a "valid existing right" excepted from the acreage limit on lease modifications imposed by the amendment.

A decision rejecting an application for modification of a coal lease will be affirmed where the additional acreage requested exceeds the limit imposed by the Federal Coal Leasing Amendments Act of 1975 notwithstanding the fact that the application was filed prior to enactment of the amendment.

Nevada Power Co., 36 IBLA 62 (June 30, 1978)

Where a coal prospecting permittee demonstrates that lands described in its permit contain coal in commercial quantities, the permittee is entitled to consideration of a lease to such lands and its request that its coal preference right lease application be restored to its status as a pending preference right lease application may be honored.

Thermal Energy Co. et al., 36 IBLA 334 (Aug. 28, 1978)

COAL LEASES AND PERMITS--Continued

LEASES--Continued

The Secretary may, in computing the fair market value of coal to be leased competitively under privately owned surface, assume a limited surface owner consent cost, based on losses and costs to the surface estate and operation and similar evaluations, regardless of the actual price paid or the amount which a surface owner could otherwise demand for consent.

Assumption of a limited surface owner consent cost to be used in place of actual cost in the computation of fair market value of coal to be leased competitively is necessary to ensure receipt of fair market value by the public as required by 30 U.S.C. § 201(a) (1976).

In the exercise of his discretion to lease under the Mineral Leasing Act, the Secretary has authority to decline to issue a coal lease where surface owner consent costs prevent the public from realizing a fair return on the value of the coal.

Coal Leasing Program -- Relationship of the Cost of Surface Owner Consent to Receipt of Fair Market Value for Federally Owned Coal, M-36909 (Jan. 15, 1979)
86 I.D. 28

Where a court decree delineates specific criteria governing the issuance of Federal coal leases by the Department, the rejection of competitive coal lease applications failing to meet such criteria will be sustained on appeal.

W. E. and B. L. Somerville, 40 IBLA 9 (Mar. 9, 1979)

BLM may properly readjust a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), within a reasonable time after expiration of its 20-year period with or without notice by BLM to the lessee prior to expiration of the 20-year period.

The failure of BLM to readjust a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), prior to or immediately after expiration of its 20-year period does not constitute a waiver of BLM's right to readjust said lease.

BLM is not estopped to readjust a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), by its failure to readjust said lease prior to or immediately after expiration of its 20-year period.

BLM's readjustment of a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), after expiration of the 20-year lease term does not violate a lessee's rights under the fifth amendment of the United States Constitution.

BLM's readjustment of a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), after expiration of the 20-year term does not violate the Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21(a) (1976), national policy in favor of coal development, and a certain cooperative agreement between the State of Wyoming and the Department of the Interior.

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (May 10, 1979)

Where BLM has rejected a coal lease application because it does not meet court-ordered emergency coal leasing criteria and the record indicates that the applicant should have been given the opportunity to submit additional evidence in support of its application, the rejection will be vacated and the matter remanded to BLM to allow the applicant a reasonable time to provide this evidence. However, where as in this case, the

COAL LEASES AND PERMITS--Continued

LEASES--Continued

emergency criteria are no longer in effect and regulations governing a new coal management program have been issued, BLM on remand should determine whether it should issue a coal lease to the applicant under the new program, giving the applicant an opportunity to provide additional information if necessary.

Coal Fuels-Wilds, 43 IBLA 170 (Sept. 28, 1979)

In determining whether a permittee is entitled to a preference right lease the Secretary must consider all legal and economic conditions affecting the proposed operation of the lease as of the time of the determination, including the applicable statutory minimum production royalty rate. A preference right lease must provide for a production royalty rate in conformity with the statutory minimum rate applicable at the time of issuance.

Reduction of Production Royalties Below Statutory Minimum Rates, M-36920 (Dec. 11, 1979)   87 I.D. 69 (1980)

Where BLM has rejected coal lease applications because they do not meet court ordered emergency coal leasing criteria, but the emergency criteria are no longer in effect and regulations governing a new coal management program have been issued, BLM on remand should determine whether issuance of the leases is appropriate under the new program, giving applicant an opportunity to provide additional information if necessary.

Glenn H. Johnson (On Reconsideration), 44 IBLA 247 (Dec. 19, 1979)

PERMITS

Generally

The Federal Coal Leasing Amendments Act of 1975, which amended sec. 2(b) of the Mineral Leasing Act, subject to "valid existing rights" terminated the Secretary's authority to extend previously granted prospecting permits.

Authority to Extend Coal Prospecting Permits: Effect of Sec. 4 of the Federal Coal Leasing Amendments Act of 1975, M-36894 (July 21, 1977)   84 I.D. 415

A prospecting permit for coal cannot be issued for land subject to a claim. If a prospecting permit for coal purports to cover land subject to a mining claim, it is invalid as to that land. Consequently, in demonstrating a discovery of coal in commercial quantities in land subject to a prospecting permit, the permittee must exclude coal in land covered by a mining claim.

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits for Coal and Phosphate, M-36893 (Aug. 2, 1977)   84 I.D. 442

A prospecting permit for coal is properly canceled under 43 CFR 3511.4-2(a)(1) for failure to pay annual rental on or before the anniversary date, as extended. An application for a preference right coal lease is properly rejected if it is based on prospecting permits which have been canceled for failure to pay rental timely.

Cortella Coal Corp., 35 IBLA 172 (May 23, 1978)

COAL LEASES AND PERMITS--Continued

PERMITS--Continued

Generally--Continued

Sec. 4 of the Federal Coal Leasing Amendments
1975 removes the authority of the Secretary t
extensions of coal prospecting permits, subje
valid existing rights, and applies to applica
permit extensions pending at the time the law
acted by Congress. Such pending applications
valid existing rights under sec. 4 of the 197
ments Act because the authority to grant coal
pecting permit extensions was discretionary w
Secretary.

The Federal coal program was substantially re
1975 by the Secretary in proper exercise of h
tion. The Bureau of Land Management did not
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coal policy, it suspended applications for co
specting permit extensions and the applications
eventually rejected because the Federal Coal
Amendments Act of 1975 removed the authority
coal prospecting permit extensions. A program
for a period of time under a statutory grant
tionary authority may be reviewed and revised
time provided it is not done in an arbitrary
is done within the authority granted by Congre

Island Creek Coal Co., 35 IBLA 247 (May 30, 19
85

Thomas C. Woodward, 35 IBLA 262 (May 31, 1978)

Sec. 4 of the Federal Coal Leasing Amendments
1975 removes the authority of the Secretary to
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ments Act because the authority to grant coal
pecting permit extensions was discretionary wi
Secretary.

Virgil V. Peterson and Mike Bell Mining & Oil C
37 IBLA 18 (Sept. 12, 1978)

A delay in taking action on an application for
sion of a coal prospecting permit while the Sec
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Administrative Procedure Act, 5 U.S.C. § 555(b)
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Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 10, 19
85 I

COAL LEASES AND PERMITS--Continued

PERMITS--Continued

Generally--Continued

A prospecting permit which embraces land which is not "unclaimed" and "undeveloped" is a nullity and void as a conveyance of any interest in that land. Land in a mining claim remains "unclaimed" land for the purposes of M-36893 so long as the claim is not validated by discovery of a valuable locatable mineral deposit at the date of permit issuance. Surface disturbing mineral activities, associated with delineation of a mineral ore body which could reasonably be expected to disclose knowledge of an area's coal potential constitute development. The bona fide purchaser provisions of sec. 27(h)(2) of the Mineral Leasing Act do not apply to permits which embrace land that is claimed or developed.

Effect and Implementation of Solicitor's Opinion M-36893 on "Unclaimed, Undeveloped," M-36893 (Supp.) (Nov. 19, 1979)
86 I.D. 627

ROYALTIES

In determining the amount of royalty due to the United States under a Federal coal lease, it is proper for Geological Survey to include as part of the value basis for the purposes of computing such royalty the amount of any reimbursed State severance tax.

Knife River Coal Mining Co., 29 IBLA 26 (Feb. 8, 1977)

Royalty provisions, which do not specifically mention in situ development, are applicable to such development. The Secretary, through the Geological Survey, is empowered to promulgate by regulation a conversion ratio of in situ extraction to coal expended in order to determine the royalty due.

In Situ Gasification of Coal, M-36890 (May 24, 1977)
84 I.D. 244

In determining the amount of royalty due to the United States under a Federal coal lease, it is proper for U.S. Geological Survey to include the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 as part of the gross value of production where the selling price received at the point of shipment to market is increased by that amount.

Knife River Coal Mining Co., 43 IBLA 104 (Sept. 24, 1979)
86 I.D. 472

The Federal Coal Leasing Amendments Act of 1975 left in effect the Secretary's authority under sec. 39 of the Mineral Leasing Act to reduce production royalties on coal leases below the statutory minimum rate.

In determining whether a permittee is entitled to a preference right lease the Secretary must consider all legal and economic conditions affecting the proposed operation of the lease as of the time of the determination, including the applicable statutory minimum production royalty rate. A preference right lease must provide for a production royalty rate in conformity with the statutory minimum rate applicable at the time of issuance.

Reduction of Production Royalties Below Statutory Minimum Rates, M-36920 (Dec. 11, 1979) 87 I.D. 69 (1980)

COAL RESEARCH AND DEVELOPMENT

A mining plan submitted to the U.S. Geological Survey is properly classified a "new operation" as defined by 30 CFR 211.1(d)(1)(iii) where as of the date of its submission to the Department, the Department has not completed its environmental impact analysis involving the area in which the mining plan is located, nor has it, as of that date, commenced and expended substantial resources in the preparation or completion of that analysis.

Scott County Development, Ltd., 33 IBLA 130 (Dec. 19, 1977)

COLOR OR CLAIM OF TITLE

GENERALLY

The Color of Title Act, 43 U.S.C. § 1068 (1970), applies only to public land, i.e., vacant, unappropriated, unreserved Federal real property subject to the public land laws. An application under the Act which is based upon color of title initiated when the subject land was withdrawn from the operation of the public land laws and reserved as national forest land must be rejected.

Ben J. Boschetto, 21 IBLA 193 (July 28, 1975)

The Department must reject a color of title application for land which is not described in the deed or other instrument on which the application is based, even though the applicants and their predecessors in occupancy believed that the public land was covered by the instrument.

Mere possession and improvement of public land by the applicant in the mistaken belief that he owns it is insufficient basis to qualify for a conveyance under 43 U.S.C. § 1068 (1970). A claim or color of title must be based upon a document, from a source other than the United States, which on its face purports to convey to the applicant the land applied for.

Cloyd and Velma Mitchell, 22 IBLA 299 (Nov. 4, 1975)

The Department of the Interior cannot grant a color of title application for land that was patented and is no longer public land; nor can a color of title application be granted where the title or claim is not derived from a source other than the Government.

A class 1 color of title application for lands classified upon dependent resurvey as omitted swamp and overflowed lands must be rejected when the applicants' 20-year period of peaceful adverse possession under color of title had not been established at the date title vested in the State under the provisions of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970).

Paul H. and Fay L. Sleeper, 22 IBLA 318 (Nov. 10, 1975)

A color of title application for land which has been withdrawn for a stock-driveway prior to any conveyance in a color of title applicant's chain of title is properly rejected as to such land.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976)
83 I.D. 23

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

A quitclaim deed in which the grantor grants all of his real property which he held of record in the county at the time of the deed constitutes color of title to a tract of Federal land in the county which the grantor held of record at the time of the deed, despite the lack of specific description of the land in the deed.

Ivie G. Berry, 25 IBLA 213 (June 16, 1976)

A color of title claim cannot be initiated on Federal land which has not been opened to the operation of the public land laws.

Where land has been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

A State statute which conclusively presumes that in certain circumstances taxes have been paid does not satisfy the Class 2 Color of Title Act requirement that taxes levied on the land have been paid on the land for a period commencing not later than Jan. 1, 1901, to the date of the application. A tax deed cannot be tacked on to the earlier claim of title. Such a deed commences a new title.

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

The possession and improvement of public land by a color of title applicant in the mistaken belief that he owns it is not a sufficient basis for conveying the land under that act. Color or claim of title must be based upon a document from a source other than the United States, which on its face purports to convey the land applied for to the applicant.

Estate of James J. Lee (Deceased), 26 IBLA 102 (July 20, 1976)

Possession of Federal land for the period of a State's statute of limitations, which may create title rights in an adverse possessor to non-Federal land, cannot affect the title of land belonging to the United States. Where there is no other acceptable basis for a belief that a claimant has title other than mere adverse possession under such a State law, there is no claim or color of title recognizable under the Color of Title Act, 43 U.S.C. § 1068 (1970).

A claim under the the Color of Title Act, 43 U.S.C. § 1068 (1970), must be based upon a deed or other document which on its face purports to convey the applicant the land applied for.

Manley Rustin and Betty Rustin, 28 IBLA 205 (Dec. 6, 1976)
83 I.D. 617

The granting of a class 2 color of title application is committed by statute to the discretion of the Secretary of the Interior. Where the public interest in retaining land embraced in such a claim in public ownership for recreational purposes outweighs any equities that the applicant has in the land, rejection of the application in the exercise of that discretion will be affirmed on appeal.

Gladys Losey, 29 IBLA 146 (Mar. 4, 1977)

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

A claim or color of title must be based on a doc
or documents, from a source other than the Unite
States, which on their face purport to convey ti
to the land applied for, but which is not good t
The mere mistaken belief that the land applied f
included in the description set forth in the cla
deed is insufficient to establish a claim or colo
title.

The obligation for proving a valid color of titl
is upon the claimant. Where a claimant has alleg
facts which, if proved, may establish her color o
title, the Board of Land Appeals may order a fact
finding hearing pursuant to 43 CFR 4.415.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.

Since land which falls within an exception to a p
mation withdrawing land for Federal purposes, is
then withdrawn, the withdrawal does not preclude
initiation and perfection of a claim under the Co
of Title Act on land excepted from the withdrawal
43 U.S.C. § 1068 (1970).

Benton C. Cavin, 31 IBLA 145 (June 30, 1977)

A color of title claim stemming from a tax sale b
State in 1900 to a color of title applicant's pred
sor in interest on which taxes have since been pa
an adverse claim sufficient to warrant the Depart
in not setting aside an 1853 decision erroneously
jecting a swampland selection or from not giving
State selection priority over the color of title a
cation.

John Stuart Hunt, Sherman R. Hunt, 31 IBLA 304 (Ju
1977)
84 I.D

In order for a State to receive legal title to a s
land selection, the Secretary of the Interior or h
delegate must determine that the land is swamp in
acter and available for disposition under the gran
An erroneous decision that selected land is unavai
because it was sold prior to the selection is vali
binding until set aside. The erroneous decision w
not be set aside where the State did not appeal an
decision has remained unchallenged for over 100 ye
the State itself sold the land at a tax sale to th
predecessor in interest of a color of title applic
and an adverse right, i.e., a class 2 color of tit
application, has intervened.

White Castle Lumber and Shingle Co., Ltd., 32 IBLA
(Sept. 12, 1977)

Where an applicant under the Color of Title Act app
for a grazing lease for the lands he now seeks to a
quire via color of title prior to the time of his a
sition of putative title, he has not demonstrated g
faith and his application is properly rejected.

An applicant who believes or has reason to believe
title to land is in the United States at the time w
he acquires it from his predecessor in interest doe
not hold color or title in good faith.

The possession of ancestors of the grantors may be
tacked on to satisfy the statutory period; however,
the ancestors' possession is not in good faith, the
chain of title has been broken, the holding period

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

the ancestors may not be tacked on and the statutory period begins to run anew.

The obligation to establish a valid color of title claim is upon the claimant. Where a claimant has alleged facts which, if proved, may establish his color of title, the Board of Land Appeals may order a fact-finding hearing pursuant to 43 CFR 4.415.

Joe I. and Celina V. Sanchez, et al., 32 IBLA 228 (Sept. 20, 1977)

In order to establish the adverse possession required for a class 1 color of title claim, a claimant must establish that he and his predecessors in title were in actual, exclusive, continuous, open, and notorious possession of the land for 20 years.

The obligation to establish a valid color of title claim is upon the claimant. Where a claimant has alleged facts which, if proved, may establish his color of title, the Board of Land Appeals may order a fact-finding hearing pursuant to 43 CFR 4.415.

Lawrence E. Willmorth, 32 IBLA 378 (Nov. 1, 1977)

Color or claim of title to Federal land requires an instrument which, on its face, purports to convey the tract in question.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

A claim is not held in peaceful adverse possession where occupancy under color of title was initiated after land has been withdrawn or reserved for Federal purposes.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

The Color of Title Act, 43 U.S.C. § 1068 (1976), applies only to public land, i.e., vacant, unappropriated, unreserved Federal real property subject to the public land laws. An application under the Act which is based upon color of title initiated when the subject land was withdrawn from the operation of the public land laws and reserved as national forest land must be rejected.

The possession and improvement of public land by a color of title applicant in the mistaken belief that he owns it is not a sufficient basis for conveying the land under that Act. Color or claim of title must be based upon a document from a source other than the United States, which on its face purports to convey the land applied for to the applicant.

The obligation for proving a valid color of title claim is upon the claimant.

Frank W. Sharp, 35 IBLA 257 (May 31, 1978)

A claim or color of title must be based upon a document which on its face purports to convey the land applied for to the applicant or her predecessors.

A class 1 color of title claim requires good faith, peaceful possession by a claimant his ancestors or grantors, under claim or color of title for more than 20 years.

A color of title application for land which is not described in deeds in the chain of title must be rejected even though the applicant and her predecessors believed

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

the land was covered by the deeds. The burden of proving a valid color of title claim is on the claimant.

A color of title application for land which has been withdrawn prior to any conveyance in applicant's chain of title is properly rejected.

Mario Lombardo, 37 IBLA 247 (Oct. 18, 1978)

Where record does not show any instrument purporting on its face to convey the disputed land not later than Jan. 1, 1901, appellant has not made out a meritorious class 2 color of title claim.

A grantor's quitclaim deed may be, if other requirements are met, sufficient to invest a grantee with color of title to the lands purportedly conveyed.

Instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained.

Extrinsic evidence may be introduced in color of title proceeding to make definite a description in a deed which is latently ambiguous as to what lands were conveyed.

Mary C. Pemberton, 38 IBLA 118 (Nov. 22, 1978)

To satisfy the requirements of a class 1 claim under the Color of Title Act, "valuable improvements" must exist on the land at the time the application is filed, or it must be shown that the land has been reduced to cultivation. If land was once cultivated, but is not cultivated at the time the application was filed and has not been cultivated for 10 years previously, the cultivation requirement of the Act has not been satisfied.

The burden of proving a valid color of title claim is on the claimant. Where it cannot be said from the evidence presented that the grantors and grantees in the claimant's chain of title acquired a parcel of land with the bona fide belief that the parcel included all the land claimed, the color of title application must be denied.

Mable M. Farlow (On Reconsideration after Hearing), 39 IBLA 15 (Jan. 11, 1979) 86 I.D. 22

Use of a formula, based solely on the longevity of an applicant's acquisition of title or possession, in determining the purchase price of a parcel of land under the Color of Title Act does not fulfill the Congressional mandate to consider and give full effect to the equities of the applicant. Each applicant's application and equities must be considered on its own merits.

Where an Act of Congress prescribed a purchase price for land to a certain group of claimants of land omitted from the original surveys, that Congressional determination of equities should be considered by the Bureau of Land Management in assessing the deduction for equities from the appraised value of land to be sold under the Color of Title Act.

Ralph and Ruth Dickinson, 39 IBLA 258 (Feb. 15, 1979)

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

Where title to public land is claimed pursuant to the provisions of the Color of Title Act, 43 U.S.C. § 1068 (1976), instruments of conveyance used to establish chain of title need only provide in some legally recognized manner for conveyance of the land such that the claimant is invested with color of title. A residuary clause in a judicial decree distributing property of an estate is sufficient to constitute chain of title.

The provisions of the Color of Title Act, 43 U.S.C. § 1068 (1976), apply only where a tract of "public land" is held in peaceful adverse possession and the other statutory requirements are satisfied. Where a homestead entry of record, valid on its face, has been made on public land and accepted by the proper land authorities, an equitable interest in favor of the entrant will be deemed to arise but the land will not be divested of its status as "public land."

Benton C. Cavin, 41 IBLA 268 (June 28, 1979)

The burden of establishing a valid color of title claim is on the claimant.

An applicant who believes or has reason to believe that title to land is in the United States at the time when he acquires it does not hold color of title in good faith.

Joe I. Sanchez and Celina V. Sanchez, et al., 42 IBLA 176 (Aug. 22, 1979)

ADVERSE POSSESSION

In order to establish the adverse possession required for a class 1 color of title claim, a claimant must establish that he and his predecessors in title were in actual, exclusive, continuous, open, and notorious possession of the land for 20 years.

Lawrence E. Willmorth, 32 IBLA 378 (Nov. 1, 1977)

A person who applies for title to public lands under the homestead laws effectively admits that he believes title to the lands is held by the United States, and this admission negates any possibility of good faith possession under color-of-title.

Earl Hummel, 44 IBLA 110 (Nov. 27, 1979)

APPLICATIONS

An appeal from a decision rejecting a color of title application will stay the running of the 60-day period, provided by the decision appealed from, for filing affidavits and evidence in support of arguments that the dependent resurvey of the land applied for erroneously classified the land as swamp and overflowed in character.

Paul H. and Fay L. Sleeper, 22 IBLA 318 (Nov. 10, 1975)

An applicant under the Color of Title Act, 43 U.S.C. § 1068 (1970), has the burden to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976)
83 I.D. 23

COLOR OR CLAIM OF TITLE--Continued

APPLICATIONS--Continued

The failure or refusal of an applicant to submit relevant tax and title data in proper form in support of his application, as required by regulation, is an adequate basis for rejection of the application. However, where the requested documents are tendered on appeal, the case may be remanded to the Bureau of Land Management for adjudication on its merits.

Iris G. Berry, 25 IBLA 213 (June 16, 1976)

A color of title claim cannot be initiated on Federal land which has not been opened to the operation of the public land laws.

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

A color of title claim must be based upon a document from a source other than the United States which purports to convey the land applied for.

An application to purchase public land under the Color of Title Act is properly rejected where the applicant shows that she has held the land for less than 20 years under a conveyance from a grantor who occupied the land for a period which, if added to her possession, would total more than 20 years, but fails to show that the grantor had any reason to believe that he had title to the land other than merely by alleged adverse possession, since mere possession of public land alone cannot be considered as constituting a holding of land under a claim or color of title in good faith as contemplated and required by the Color of Title Act.

Mildred A. Powers, 27 IBLA 213 (Oct. 6, 1976)

Where an applicant under the Color of Title Act applied for a grazing lease for the lands he now seeks to acquire via color of title prior to the time of his acquisition of putative title, he has not demonstrated good faith and his application is properly rejected.

An applicant who believes or has reason to believe that title to land is in the United States at the time when he acquires it from his predecessor in interest does not hold color or title in good faith.

The possession of ancestors of the grantors may be tacked on to satisfy the statutory period; however, if the ancestors' possession is not in good faith, the chain of title has been broken, the holding period of the ancestors may not be tacked on and the statutory period begins to run anew.

Joe I. and Celina V. Sanchez, et al., 32 IBLA 226 (Sept. 20, 1977)

A color of title application for land which is not described in deeds in the chain of title must be rejected even though the applicant and her predecessors believed the land was covered by the deeds. The burden of proving a valid color of title claim is on the claimant.

Marie Lombardo, 37 IBLA 247 (Oct. 18, 1978)

An applicant who believes or has reason to believe that title to land is in the United States at the time when he acquires it does not hold color of title in good faith.

Joe I. Sanchez and Celina V. Sanchez, et al., 42 IBLA 176 (Aug. 22, 1979)

COLOR OR CLAIM OF TITLE--Continued

APPRAISED VALUE

Use of a formula, based solely on the longevity of an applicant's acquisition of title or possession, in determining the purchase price of a parcel of land under the Color of Title Act does not fulfill the Congressional mandate to consider and give full effect to the equities of the applicant. Each applicant's application and equities must be considered on its own merits.

Where an Act of Congress prescribed a purchase price for land to a certain group of claimants of land omitted from the original surveys, that Congressional determination of equities should be considered by the Bureau of Land Management in assessing the deduction for equities from the appraised value of land to be sold under the Color of Title Act.

Ralph and Ruth Dickinson, 39 IBLA 258 (Feb. 15, 1979)

Where the purchase price for a tract of land applied for under the Color of Title Act is based upon a Bureau of Land Management appraisal of the fair market value of the land at the date of appraisal, and no allowance is made for equitable factors which appear on the record in favor of the applicant, the case will be remanded to the Bureau of Land Management for consideration of such equities.

Gerald Baehler, 42 IBLA 36 (July 31, 1979)

CULTIVATION

To satisfy the requirements of a class 1 claim under the Color of Title Act, "valuable improvements" must exist on the land at the time the application is filed, or it must be shown that the land has been reduced to cultivation. If land was once cultivated, but is not cultivated at the time the application was filed and has not been cultivated for 10 years previously, the cultivation requirement of the Act has not been satisfied.

Mable M. Farlow (On Reconsideration after Hearing), 39 IBLA 15 (Jan. 11, 1979) 86 I.D. 22

DESCRIPTION OF LAND

A color of title application is properly rejected where the applicant has failed to establish how conveyances in her chain of title describing lands different from that described in her application, and different from each other, give color of title to the applied for land for the requisite period of time.

Generally, conveyance which describe only a "possessory interest" in a parcel of land do not constitute a claim or color of title within the contemplation of the Color of Title Act.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

Extrinsic evidence may be used to make definite the description in a private deed which contains a latent ambiguity, either to determine actual or color of title. Therefore, a color of title claimant may introduce extrinsic evidence to establish whether the deeds in her chain of title were based upon plats, records and other documents which can be read together with the deeds as creating a color of title beyond the actual title shown on an official Federal survey plat.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

COLOR OR CLAIM OF TITLE--Continued

DESCRIPTION OF LAND--Continued

Instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained.

Extrinsic evidence may be introduced in color of title proceeding to make definite a description in a deed which is latently ambiguous as to what lands were conveyed.

Mary C. Pemberton, 38 IBLA 110 (Nov. 22, 1978)

While the general rule is that a color of title claim must be based on a deed or other written instrument which on its face purports to convey the land sought, extrinsic evidence may be used to make definite the description in a deed which contains a latent ambiguity.

Where extrinsic evidence does not adequately show that predecessors in a color of title claimant's chain of title, whose holdings must be tacked on to establish the requisite 20 years holding for a class 1 claim, could have a bona fide basis for believing that land described as lot 5, shown on the official Government plat on one side of a river, included land on the opposite side of the river, there could not be a good faith holding under color of title.

Mable M. Farlow (On Reconsideration after Hearing), 39 IBLA 15 (Jan. 11, 1979) 86 I.D. 22

Where title to public land is claimed pursuant to the provisions of the Color of Title Act, 43 U.S.C. § 1068 (1976), instruments of conveyance used to establish chain of title need only provide in some legally recognized manner for conveyance of the land such that the claimant is invested with color of title. A residuary clause in a judicial decree distributing property of an estate is sufficient to constitute chain of title.

Benton C. Cavin, 41 IBLA 268 (June 28, 1979)

GOOD FAITH

A color of title application is properly rejected where the applicant has failed to establish how conveyances in her chain of title describing lands different from that described in her application, and different from each other, give color of title to the applied for land for the requisite period of time.

Generally, conveyance which describe only a "possessory interest" in a parcel of land do not constitute a claim or color of title within the contemplation of the Color of Title Act.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

A quiet title decree of a State court does not constitute color of title to a tract of Federal land when it was rendered several months after the plaintiff in the quiet title action learned that he did not own the land, although it may serve to demonstrate that the plaintiff is the sole qualified applicant under the other indicia of title upon which the applicant relies.

Ivie G. Berry, 25 IBLA 213 (June 16, 1976)

An application to purchase public land under the Color of Title Act is properly rejected where the applicant shows that she has held the land for less than 20 years under a conveyance from a grantor who occupied the land for a period which, if added to her possession, would total more than 20 years, but fails to show that the grantor had any reason to believe that he had title to the land other than merely by alleged adverse possession, since mere possession of public land alone cannot be considered as constituting a holding of land under a claim or color of title in good faith as contemplated and required by the Color of Title Act.

Mildred A. Powers, 27 IBLA 213 (Oct. 6, 1976)

The requirement of good faith contained in the Color of Title Act necessitates establishing the 20-year period of possession under claim or color of title prior to the time the claimant learned of the defect in her purported title. If this requires counting years during which the claimant's predecessors in interest held the land, their good faith must also be established.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

Where an applicant under the Color of Title Act applied for a grazing lease for the lands he now seeks to acquire via color of title prior to the time of his acquisition of putative title, he has not demonstrated good faith and his application is properly rejected.

An applicant who believes or has reason to believe that title to land is in the United States at the time when he acquires it from his predecessor in interest does not hold color or title in good faith.

The possession of ancestors of the grantors may be tacked on to satisfy the statutory period; however, if the ancestors' possession is not in good faith, the chain of title has been broken, the holding period of the ancestors may not be tacked on and the statutory period begins to run anew.

Joe I. and Celina V. Sanchez, et al., 32 IBLA 228 (Sept. 20, 1977)

A 20-year period of good faith adverse possession immediately prior to the time claimant learned of the defect in his purported title is a requirement of a class 1 color of title claim. Good faith requires an honest belief by claimant that the land was owned by him and the Department may consider whether such belief was unreasonable in the light of the facts then actually known to claimant. Although a period of possession by claimant's predecessors in title may be tacked on to claimant's possession, their good faith must also be established.

Lawrence E. Willmorth, 32 IBLA 378 (Nov. 1, 1977)

Good faith possession under color or claim of title requires that the claimant possess the land without knowing or having reason to know that title to the land was vested in the United States. Where the claimant holds a right-of-way granted by the United States covering the land in question and has received periodic notifications of trespass from Federal officers, there is no good faith possession.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

A color of title applicant lacks the required good faith if he knew when he acquired the land that title was in the United States. If the title defect was not known at the time of acquisition, the good faith must be established for the 20-year period prior to its discovery. If the applicant has not held the land for 20 years, he may tack on the possession of his predecessors in interest, provided they possessed the land in good faith. If any predecessor knew of the title defect, the 20-year period must be established after he divested his interest to someone in the chain of title who did not know of the defect and thus possessed the land in good faith.

George E. Merrick, Alice J. Merrick, 35 IBLA 208 (May 26, 1978)

A grantor's quitclaim deed may be, if other requirements are met, sufficient to invest a grantee with color of title to the lands purportedly conveyed.

Instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained.

Extrinsic evidence may be introduced in color of title proceeding to make definite a description in a deed which is latently ambiguous as to what lands were conveyed.

Mary C. Pemberton, 38 IBLA 118 (Nov. 22, 1978)

Where extrinsic evidence does not adequately show that predecessors in a color of title claimant's chain of title, whose holdings must be tacked on to establish the requisite 20 years holding for a class 1 claim, could have a bona fide basis for believing that land described as lot 5, shown on the official Government plat on one side of a river, included land on the opposite side of the river, there could not be a good faith holding under color of title.

Mable M. Farlow (On Reconsideration after Hearing), 39 IBLA 15 (Jan. 11, 1979) 86 I.D. 22

An applicant wh[illegible]lieves or has reason to believe that title to land is in the United States at the time when he acquires it does not hold color of title in good faith.

Joe I. Sanchez and Celina V. Sanchez, et al., 42 IBLA 176 (Aug. 22, 1979)

A person who applies for title to public lands under the homestead laws effectively admits that he believes title to the lands is held by the United States, and this admission negates any possibility of good faith possession under color-of-title.

Earl Hummel, 44 IBLA 110 (Nov. 27, 1979)

IMPROVEMENTS

Improvements relied upon to establish a class 1 color of title claim must be present on the land at the time the application is filed and must enhance the value of the land.

Lawrence E. Willmorth, 32 IBLA 378 (Nov. 1, 1977)

COLOR OR CLAIM OF TITLE--Continued

IMPROVEMENTS--Continued

To satisfy the requirements of a class 1 claim under the Color of Title Act, "valuable improvements" must exist on the land at the time the application is filed, or it must be shown that the land has been reduced to cultivation. If land was once cultivated, but is not cultivated at the time the application was filed and has not been cultivated for 10 years previously, the cultivation requirement of the Act has not been satisfied.

Mable M. Farlow (On Reconsideration after Hearing), 39 IBLA 15 (Jan. 11, 1979) 86 I.D. 22

COMMUNICATION SITES

Under 43 CFR 2802.1-7(e), which provides that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Following a hearing under 43 CFR 2802.1-7, a decision increasing the charges for use and occupancy of a communication site is in error to the extent that the decision is based upon unspecified evidence not in the record and not made known to the user, and the decision must be set aside.

Under 602 DM 1.3, standards for evaluating easements granted by the Department are set forth in Interagency Land Acquisition Conference, Uniform Appraisal Standards for Federal Land Acquisitions.

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is a proper method of determining the fair market value of such site where there is sufficient comparable data available.

Under 43 CFR 2802.1-7(e), a revision of charges for use and occupancy of a microwave communication site should be based upon the physical condition of the right-of-way at the time the user properly commenced occupancy of the site or at the time of grant thereof, whichever was earlier, with value adjusted to present value in that condition.

"Highest and best use." As to the improver of a communication site during the term of his grant, a determination that the highest and best use of property is for communications purposes must be based on evidence showing it is so reasonably likely the site would be chosen for use as a communication site in the absence of improvements made by the improver that the suitability of the land for communications purposes would affect its general market value.

"Before and after rule." In reappraisal of a communication site, the before and after rule is applied by determining the market value of the Government tract including the site at the time of reappraisal, excluding any enhancement to or diminution from the site project, and subtracting therefrom the market value of the remaining Government property interest, including enhancement or diminution from the project.

COMMUNICATION SITES--Continued

In the absence of better evidence of comparable leases, the "before and after" method should be employed in appraisals of communication sites under 43 CFR 2802.1-7.

In a case where a substantial increase is proposed in charges for a communication site under 43 CFR 2802.1-7(e), the required hearing should be conducted in accordance with the accepted concepts of due process.

American Telephone and Telegraph Co., et al., 25 IBLA 341 (June 30, 1976)

Under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7(e), an applicant has no right to a hearing in connection with original charges for use and occupancy of a communication site, and a hearing pursuant to a request under 43 CFR 4.415 will not be granted where applicant fails to make specific allegations or offer specific proof to show in what factors a Departmental appraisal is in error.

Without convincing evidence that charges prescribed under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7 for use and occupancy of a communication site are excessive, charges properly prescribed by an authorized officer will be sustained on appeal.

Departmental regulation 43 CFR 2802.1-7 contemplates that a charge will be initially established for the entire term of the grant of a communication site right-of-way.

Mountain States Telephone and Telegraph Co., 26 IBLA 393 (Sept. 16, 1976) 83 I.D. 372

An application for a communication site under 43 U.S.C. § 961 (1970) should be denied where utilization of an existing right-of-way is practical under 43 U.S.C. § 1763 (19__) and where the proposed site would have an adverse impact on the environment.

"Practical." Under 43 U.S.C. § 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

A right-of-way for a communication site for which application was made under the Act of Mar. 4, 1911, shall conform to the provisions of the Federal Land Policy and Management Act of 1976, sec. 510, 90 Stat. 2743, 2782, when application for grant was pending on Oct. 21, 1976.

Where the current fair rental value of a right-of-way has been determined in accordance with accepted appraisal procedures, and the permittee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Four States Television, Inc., 32 IBLA 205 (Sept. 15, 1977)

An applicant has no right to a hearing in connection with original Federal charges for use and occupancy of a communication site, and in the absence of any specific assertion showing error in the appraisal, the appraisal will be sustained on appeal if it is properly formulated.

When a parcel of land is properly determined to have a highest and best use for communication site purposes, an annual use charge based on the fair market value of the right-of-way grant may be determined by comparison with value of the right of use for similar sites and by making whatever adjustments may be necessary because of differences in factors influencing value.

Under sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1764(g) (West Supp. 1977), charges for rights-of-way on public lands are in general to be paid annually rather than in advance for a longer period pursuant to 43 CFR 2802.1-7(a).

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

A communication site right-of-way granted on Sept. 2, 1959, pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1970), is subject to the periodic reappraisal under the terms of the specific grant and applicable regulations then in effect, 43 CFR 244.21(b) and (f) (1954).

Second party utilization of a communication site right-of-way granted on Sept. 2, 1959, pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1970), is subject to BLM authorization under the governing regulation, 43 CFR 244.18(a) (1954).

James W. Smith, 34 IBLA 146 (Mar. 10, 1978)

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. Where an appellant has raised sufficient doubt that the Bureau properly considered the highest and best use of a right-of-way in determining comparability of other sites as a basis for the use charges, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but are only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, payments for use of right-of-way sites should be on an annual basis at the fair market value unless the annual payment would be less than $100. Therefore, although lands may be appraised for a longer future period of time, lump-sum payments for future years may not be demanded for amounts exceeding

the statutory amount; instead charges for such amounts should be made on an annual basis.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

Where there are multiple users on the same communications site each user is individually responsible for the fair market rental value computed as of the time of the initiation of use, and such rental value determined for the site may not be prorated among different users.

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decisionmaker, that the decisionmaker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. Where an appellant has raised sufficient doubt that the Bureau properly considered the highest and best use of a right-of-way in determining comparability of other sites as a basis for the use charges, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but may be only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1764(g) (West Supp. 1978), payments for use of right-of-way sites should be on an annual basis at the fair market value unless the annual payment would be less than $100. Therefore, although lands may be appraised for a longer future period of time, lump-sum payments for future years may not be demanded for amounts exceeding the statutory amount; instead charges for such amounts should be made on an annual basis.

COMMUNICATION SITES--Continued

Where there are multiple users on the same communication site each user is individually responsible for the fair market rental value of his authorized use.

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decisionmaker, that the decisionmaker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Donald R. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

Where, in connection with a communication site right-of-way, BLM requests an applicant to submit copies of FCC licenses and such applicant indicates a willingness to comply, the case is properly remanded for further processing.

Donald R. Clark, 44 IBLA 130 (Nov. 27, 1979)

COMMUNITY PROPERTY

Rights under an executory contract to acquire property entered into by the husband alone are presumed to be community property under California law, and a conveyance as community property to husband and wife in settlement of litigation regarding the contract corroborates the presumption; both spouses stand on equal footing with respect to charges, based on the executory contract, of violating the acreage limitations in sec. 7 of the Desert Land Act, 43 U.S.C. § 329 (1970).

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

CONFLICT OF INTEREST

One of the functions of the Department of Justice is to construe the laws under which other Government Departments act, 28 U.S.C. § 512 (1970), and when the Department of Justice has advised the Department of the Interior that it has construed a conflict of interest statute affecting Members of Congress and has determined that it is permissible for the spouse of a Member of Congress to hold a grazing lease for national resource lands under certain circumstances, that opinion is binding on this Department, and a grazing lease is properly issued when the applicant has satisfied the criteria set forth by the Department of Justice.

Joseph T. Kurkowski, 24 IBLA 58 (Feb. 23, 1976)

CONSTITUTIONAL LAW

GENERALLY

Pursuant to the Property Clause of the U.S. Const. art. IV, § 3, cl. 2, Congress has enacted the Taylor Grazing Act, 43 U.S.C. § 315 *et seq*. (1970), and other statutory authority which empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and to determine whether or not an individual has committed a trespass.

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an administrative law judge is employed by the Department of the Interior.

Under the Supremacy Clause, U.S. Const., art. VI, cl. Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

H. P. Webb, 34 IBLA 362 (May 1, 1978)

The seventh amendment right to a jury trial does not extend to administrative proceedings, such as mining claim contests, where statutory rights adjudicated therein were unknown at common law.

United States v. Paul P. Fisher and Euel E. Fisher, 37 IBLA 80 (Sept. 22, 1978)

The Property Clause of the United States Constitution art. IV, § 3, cl. 2, gives Congress the power over the public lands "to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them." When Congress so acts, the Federal legislation necessarily overrides conflicting State laws under the Supremacy Clause. U.S. Constitution art. IV, cl. 2.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not statute enacted by Congress is constitutional.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

Under the United States Constitution, States have no power over disposition of Federal property.

Ralph and Ruth Dickinson, 39 IBLA 258 (Feb. 15, 1979)

BLM's readjustment of a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), after expiration of the 20-year lease

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

term does not violate a lessee's rights under the fifth amendment of the United States Constitution.

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (May 10, 1979)

Under the Property Clause, Congress has the power to control the disposition and use of water on, under, or appurtenant to original public domain lands, and it is not lightly inferred that this power has been exercised.

Federal control over the disposition and use of water in, on, under or appurtenant to Federal land ultimately rests on the Supremacy Clause, which permits the Federal Government to exercise its constitutional prerogatives without regard to State law.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

A provision of State law, relating to assessment work on mining claims, which is more liberal than the requirements of Federal law, cannot override such Federal law. Article IV, § 3, cl. 2, of the Federal Constitution vests in the Congress authority to promulgate appropriate laws governing the public lands and other property of the United States.

Bruce Parke, 42 IBLA 18 (July 25, 1979)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Charlie Carnal, Walter Peck, and Edward Porzansky, 43 IBLA 10 (Sept. 11, 1979)

DUE PROCESS

Although a respondent in a grazing license trespass hearing brought by the Bureau of Land Management has the right to be represented and aided by legal counsel, the Department has no duty or responsibility under the Constitution or the Administrative Procedure Act to provide such counsel for him.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

Estate of Malcolm N. McKinnon, 31 IBLA 290 (July 22, 1977)

Gulf Oil Corp., 32 IBLA 13 (Aug. 29, 1977)

CONSTITUTIONAL LAW--Continued

DUE PROCESS--Continued

The filing of an application for modification of an existing coal lease does not give rise to a vested property right. Thus, such an application qualifies as neither a valid existing right excepted from application of the acreage limit on lease modifications set by the Federal Coal Leasing Amendments Act of 1976 nor a right protected by the Fifth Amendment from application of subsequently amended statutes or regulations.

Nevada Electric Investment Co., 33 IBLA 3 (Nov. 14, 1977)

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

R. E. Webb, 34 IBLA 362 (May 1, 1978)

In an administrative hearing to determine the validity of a mining claim, the requirements of due process are satisfied when notice and opportunity for an impartial hearing are provided in accordance with the Administrative Procedure Act. 5 U.S.C. § 551 *et seq.* (1976).

United States v. Paul P. Fisher and Buel E. Fisher, 37 IBLA 80 (Sept. 22, 1978)

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(2) do not violate due process.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

BLM's readjustment of a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), after expiration of the 20-year lease term does not violate a lessee's rights under the fifth amendment of the United States Constitution.

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (May 10, 1979)

"Person." Regulation 43 CFR 4.450-1 specifically gives persons with an adverse interest in land a right to contest the adverse claim. It does not depend on the applicability of the due process clause of the Constitution to either claimant. A State is a "person" within the meaning of this private contest regulation.

State of Alaska, 42 IBLA 1 (July 25, 1979)

The procedures of the Department of the Interior in mining contests where a mining claimant is afforded notice and an opportunity to be heard comport with the requirements of due process under the United States Constitution.

United States v. J. C. Wilson, 44 IBLA 1 (Nov. 6, 1979)

CONSTITUTIONAL LAW--Continued

DUE PROCESS--Continued

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Dorothy Smith, Keith C. Hayes, 44 IBLA 25 (Nov. 6, 1979)

CONTESTS AND PROTESTS
(*See also* Rules of Practice--if included in this Index.)

GENERALLY

While a mining contest is within the jurisdiction of an administrative law judge, he may reopen the hearing for the production of further evidence before he makes his decision.

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant. However, if the Government in a mining contest fails to present a prima facie case and the contestees move to dismiss the case and rest, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other essential issues to determine whether the application may be allowed.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

Where an unamended senior offer for a noncompetitive fractional oil and gas lease on acquired lands is not in compliance with 43 CFR 3130.4-4, a junior offer obtains priority to extent of conflicts between competing filings, and the junior offeror's protest must be sustained.

Frederick L. Smith et al., 19 IBLA 162 (Mar. 14, 1975)

A mining claim is a claim to property which may not be declared invalid except in accordance with due process of law. Due process consists of proper notice and opportunity for an agency hearing in accordance with the Administrative Procedure Act, and it suffices if the claimant is properly notified and afforded the opportunity to be heard. But there is no requirement that a hearing be held where the contestee fails to avail himself of the opportunity for a hearing within the time provided.

United States v. James R. and Sammy B. Ragsdale, 20 IBLA 348 (June 11, 1975)

A protestant against the filing of a survey plat bears the burden of proof, *i.e.*, the risk of nonpersuasion, to show why the plat should not be accepted, and the applicant State has the burden of demonstrating that land is swamp and overflowed in character. The protestant against the filing of a survey plat who claims that title to the land passed to the State under the

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), is properly assessed with the burden of proof, *i.e.*, the risk of nonpersuasion, in the proceeding.

In a hearing held to determine whether lands were swamp and overflowed at the time of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), the parties asserting the State's title fail to meet their burden of proof when the evidence submitted indicates that the mangrove area claimed as swampland is in fact below the line of mean high tide, and was properly delineated from the upland by the meander line.

Demonstration that the field notes accompanying the plat of survey inaccurately or incompletely recite the history of the lands surveyed does not require rejection of the survey or field notes, when it is not disputed that the field notes accurately describe the evidence of the history of settlement and use visible during examination and survey, and when it is concluded that the survey itself was properly executed.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

Where the answer to a mining contest complaint denying the charges is timely filed by one contestee, but is untimely filed by all other contestees, the charges as to those contestees filing untimely answers will be taken as admitted and their interests in the mining claims will be declared null and void. The contestee who filed a timely answer is entitled to a hearing as to the validity of the claims.

United States v. Albert S. Hunter et al., 22 IBLA 28 (Sept. 10, 1975)

Where a contestee makes a timely response to a Government complaint in a mining contest, which can reasonably be construed as a general denial of the allegations contained in the complaint, the response will be considered a sufficient answer within the contemplation of the regulations. The allegations then cannot be taken as admitted and the mining claim declared null and void without a hearing.

United States v. Cliff Libby, 24 IBLA 39 (Feb. 19, 1976)

A mining claim is a claim to property which may not be declared invalid without proper notice and an adequate opportunity for an agency hearing in accordance with due process of law. That due process consists of notice and opportunity for hearing, and it suffices if the claimant is afforded the opportunity to be present and heard. The fact that the claimant, after filing a timely answer to the contest complaint, refused to attend that hearing and produce evidence does not vitiate the due process he has received.

United States v. Carl Bellamy, 25 IBLA 50 (May 14, 1976)

"Final entry." When an amended homestead final proof has been submitted, the term "final entry" in the proviso in sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, *as amended*, 43 U.S.C. § 1165 (1970) refers to the submission, to the proper officials, of the amended final proof and required fees.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, *as amended*, 43 U.S.C. § 1165 (1970) which requires issuance of a patent 2 years after receipt upon final proof for a homestead entry, a contest against an entry should not be dismissed where the complaint was filed within 2 years following the submission of additional affidavits amending the entryman's deficient final proof, despite the fact that the receipt in connection

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

with the deficient proof had been issued more than 2 years before filing of the complaint and the receipt had never been canceled or a new receipt issued.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

A Federal district court jury verdict in a suit to cancel desert land patents, that the entrymen and their purchaser under an illegal executory contract did not commit fraud against the United States, does not collaterally estop this Department from adjudicating a contest grounded on the illegal executory contract against the purchaser's own entry, because the legal standard applicable in the subsequent contest is different than that in the fraud action--a desert land entry can be subject to cancellation for acts that do not constitute fraud.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

Where the Bureau of Land Management determines that an Alaska Native allotment application should be rejected because the land was not used and occupied by the applicant, the BLM shall issue a contest complaint pursuant to 43 CFR 4.451 *et seq*. Upon receiving a timely answer to the complaint, which answer raises a disputed issue of material fact, the Bureau will forward the case file to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, for assignment of an administrative law judge, who will proceed to schedule a hearing at which the applicant may produce evidence to establish entitlement to his allotment.

Donald Peters, 26 IBLA 235 (Aug. 17, 1976) 83 I.D. 308

John Moore et al., 40 IBLA 321 (Apr. 30, 1979)
86 I.D. 279

Although, in a mining claim contest, the Government may make a prima facie case of no discovery by the testimony of a mineral examiner that he has been on the land in issue and saw nothing of mineral value, a prima facie case is ordinarily not made where it is established that the examiner was not on the land in issue.

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Co., Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

Service of a document upon a person's attorney of record constitutes effective service upon such person.

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the administrative law judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

Where a mineral examiner testifies on the basis of his examination of mining claims that the mineral values on the claims are insufficient to support a finding of discovery, a prima facie case against the validity of the claims has been established, and where the contestees walked out of the hearing and did not submit evidence to rebut the prima facie case, the claims must be declared invalid.

United States v. Mine Development Corp. et al., 27 IBLA 238 (Oct. 18, 1976)

Where, at the hearing of a mining claim contest, the transcript of a previous hearing in another related contest is received in evidence, those portions of the transcript which are relevant and material to the case at hand may form, or contribute to, the basis for the decision in the case, regardless of which party introduced the transcript in evidence.

United States v. J. R. Osborne et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

Where the State of Alaska has applied to select certain land and has been given tentative approval of that selection, and thereafter a conflicting Native allotment application is filed which is supported only by meager evidence of use and occupancy, it is error to allow the allotment application and to cancel the State's tentative approval and reject the selection application without notice and an opportunity for a hearing in which the State may participate.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

In a mining contest, a matter not charged in the complaint may only be considered by the Administrative law judge if it was raised at the hearing without objection and the contestee was fully aware that the issue was raised.

United States v. Glenn C. Bolinder and L. C. Turner, et al., 28 IBLA 187 (Dec. 6, 1976)   83 I.D. 609

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. A mining claim may be declared null and void where there was a charge in the complaint of insufficient minerals to constitute a valid discovery.

United States v. William C. Smith, a/k/a Bill Smith, 29 IBLA 7 (Feb. 8, 1977)

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. However, under the rules an answer may be accepted if it is received within 10 days after the due date and it is determined that the answer was probably transmitted before the end of the period in which it was required to be filed.

United States v. Jesse Smith, 29 IBLA 10 (Feb. 8, 1977)

Where the answer to a mining contest complaint denying the charges is not timely filed, the charges will be deemed admitted and the contest will be decided without a hearing. 43 CFR 4.450-7(a).

United States v. Edison T. Schaefer, 29 IBLA 84 (Feb. 23, 1977)

A field examination report of a trade and manufacturing site claim is not evidence on which the final action of cancellation may be taken, until such time as the pertinent facts are admitted by the applicant or the report is admitted into evidence at a hearing initiated by a contest complaint.

John B. Coghill, 29 IBLA 177 (Mar. 18, 1977)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant, but if the Government in a contest fails to present a prima facie case and the contestee moves to dismiss the case and rests, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by contestee shows there has not been a discovery, it may be used in reaching a decision that the claim is invalid regardless of any defects in the prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, and a mining claimant fails to show discovery by a preponderance of the evidence, he has not satisfied his burden of proof and the claim must be declared invalid.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

Since a Government contest is not insufficient and subject to dismissal for failure to name all parties in interest, a contest is properly brought against persons who are heirs of a director of a corporation whose charter has expired under State law, even though the State law provides that the property of such a corporation passes to a public trustee for distribution by him. Any interest of those not named or served in a manner provided by the pertinent regulation is not affected.

United States v. Erma Elizabeth Conner, and Walter T. Nolte, as the Heirs of B. W. Speer, a Last Known Director of the Arlington Gold Mining Co. (Contestee), 31 IBLA 173 (July 5, 1977)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a proceeding to determine the validity of an unpatented mining claim the claimants must prevail, if at all, upon the strength of their own case, rather than upon any weakness in that of the Government.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

A Bureau of Land Management decision, dismissing an answer to contest complaints filed in behalf of individual contestees and a company, and holding mining claims null and void because it appeared the company did not own the claims and because the answer was filed in behalf of the individual contestees by someone not authorized to practice in their behalf, will be vacated where on appeal it is shown that within the time for filing the answer the claims had been transferred to the company. There is no need to dismiss the contest and initiate a new contest against the company since a timely answer has been filed in its behalf; instead, the complaints should be amended to substitute the company as the contestee and party in interest and the contest proceeding should go forward against it.

Sharon K. Milazzo et al., 33 IBLA 57 (Dec. 5, 1977)

In a Government contest, regular service of the complaint must be presumed, where no question is raised as to the validity of certified mail return receipts

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

included in the record, regular on their face and indicating proper service.

United States v. Bonda Niece and Leslie Niece, 33 IBLA 290 (Jan. 10, 1978)

In a mining contest a contestee may rest at the close of the Government's case and move for a dismissal based on the Government's failure to make out a prima facie case of a claim's invalidity. If, however, the contestee goes forward and presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

A private contest complaint which does not set out in clear and concise language a statement of the facts constituting the grounds of contest is properly dismissed.

Eugene A. Whitmill, 34 IBLA 123 (Mar. 2, 1978)

When BLM adjudicates issue and offeror does not appeal, doctrine of administrative finality, which is administrative counterpart of res judicata, generally bars consideration of new appeal arising from later proceeding involving same lease and same issue. Accordingly, BLM acted properly in dismissing appellant's protest, filed Nov. 18, 1977, against oil and gas lease annual rental adjudicated on July 27, 1977.

Wilfred Plomis, 35 IBLA 1 (May 3, 1978)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Unsubstantiated allegations of temporary incapacity due to a nervous breakdown cannot serve as a basis for waiving this mandatory requirement.

United States v. Brent J. Brunker, 36 IBLA 36 (June 27, 1978)

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

The Department of the Interior is lawfully empowered to initiate a contest pursuant to the Administrative Procedure Act to determine the validity of unpatented mining claims. This procedure makes no provision for 1) trial by jury, 2) advice to the contestant concerning his constitutional rights, 3) compensation to the contestant for the value of the claim if it is found to be invalid, or 4) appointment by the Department of qualified counsel to represent the contestant; and this procedure does not violate constitutional guarantees of due process, the General Mining Law, or the Administrative Procedure Act. Presentation of the contestant's case by counsel employed by the Forest Service in appropriate cases is permissible, and Federal employees may testify as witnesses, and may conduct examinations and secure mineral samples on unpatented mining claims without a search warrant.

United States v. John Gavanich, 36 IBLA 111 (July 14, 1978)

Where, in a mining contest, a contestee presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

Where the only properly corroborated fact alleged by private contestant related to situs of contestee's residence in 1975 and thereafter, but precomplaint record included assertion by contestee that he lived on homestead in 1972, 1973, and 1974, the contestant has not thereby alleged facts which, if proved, would require cancellation of entry, and contest must be dismissed under 43 CFR 4.450-5(a).

Although in his summary dismissal of private contest against homestead entry administrative law judge discussed issues upon which contestant had failed to submit corroborated allegations of fact along with his complaint, such action by judge did not relieve contestant of his burden of filing corroboration, despite provisions of 43 CFR 4.450-4(b) allowing judge to "raise issues in connection with deciding a contest."

Administrative law judge properly dismissed without a hearing a private homestead entry contest in which complaint failed to allege corroborated facts which, if proved, would provide sufficient basis for cancellation of entry.

Where contestant in private homestead entry contest appeals to Board of Land Appeals and makes certain assignments of error by administrative law judge, but allegations of fact upon which those assignments are based were not corroborated at filing of contest complaint, and issues raised by those assignments were not raised in complaint, such assignments are not material for purposes of appeal to the Board.

Ernest C. Lamb v. Richard R. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

The seventh amendment right to a jury trial does not extend to administrative proceedings, such as mining claim contests, where statutory rights adjudicated therein were unknown at common law.

United States v. Paul E. Fisher and Opal E. Fisher, 37 IBLA 80 (Sept. 22, 1978)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Where contestees deny the allegations in the complaint only as to 4 claims but not as to 15 other claims addressed in the complaint, the complaint will be taken as admitted as to the 15 claims not addressed in the answer to the complaint.

Where contestees in a mining claim contest file a timely answer to the contest complaint, this answer is efficacious as to any other contestees who are members of his family if it appears on the face of the answer that they wish to retain their interests, if any, in the claims, as the contestees who answered may be regarded as having done so on their family members' behalf. In these circumstances, these other contestees are properly regarded

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

as having answered the complaint, absent any manifestation of a contrary intent.

Where a contestee makes a timely response to a Government complaint in a mining contest which is sufficient to raise a justiciable controversy, the allegations then cannot be taken as admitted and the mining claim(s) cannot be declared null and void without a hearing.

United States v. Jerry Prock et al., 39 IBLA 148 (Jan. 29, 1979)

Regulation 43 CFR 4.450-1 gives a person with an adverse interest in land a right to contest an adverse claim. The Department of the Interior has consistently recognized States as included within the term "person" within the meaning of the regulation, allowing them to initiate private contests.

Where the State of Alaska has shown an interest in land in its existing airport, it may bring a private contest to challenge Native allotment applications for land in conflict with the airport.

State of Alaska, 40 IBLA 79 (Mar. 22, 1979)

The State of Alaska will be afforded time within which to bring private contests against Native allotment applications conflicting with an existing airport runway built by the State and to show it has standing to contest. If it does so timely, the Bureau of Land Management will adjudicate its standing as a contestant and the contests will proceed if it finds affirmatively. If not, the State's timely objections will be taken as a protest and a factfinding hearing will be held. If the State fails to take timely action, a decision rejecting its application to reinstate a conflicting airport lease application will stand.

State of Alaska, 40 IBLA 118 (Mar. 27, 1979)

Where an applicant for an Alaska Native allotment was a minor at the time she alleges the initial use and occupancy of the land, but not so young as to preclude any possibility that she was then capable of doing so as an independent citizen in her own right to the potential exclusion of others, prior to rejection of her application on the basis of her youth BLM should provide notice and an opportunity for hearing.

Nellie Boswell Beecroft, 41 IBLA 70 (May 31, 1979)

Where Bureau of Land Management determines an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 *et seq*.

Frederick Phillips et al., 41 IBLA 169 (June 22, 1979)

Ella S. Sheldon et al., 42 IBLA 276 (Aug. 27, 1979)

Elena Bartman, 43 IBLA 284 (Oct. 17, 1979)

Where the Bureau of Land Management (BLM) determines that an Alaska Native allotment application should be rejected in part because the Native did not use all of the land applied for, the BLM shall initiate a contest proceeding pursuant to 43 CFR 4.451 *et seq*.

Frank Bulland, 41 IBLA 207 (June 27, 1979) 86 I.D. 342

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing.

United States v. James Hawkeswood et al., 41 IBLA 245 (June 27, 1979)

United States v. Edna Horstmeier, 42 IBLA 33 (July 26, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska, 41 IBLA 309 (July 5, 1979)

"Person." Regulation 43 CFR 4.450-1 specifically gives persons with an adverse interest in land a right to contest the adverse claim. It does not depend on the applicability of the due process clause of the Constitution to either claimant. A State is a "person" within the meaning of this private contest regulation.

State of Alaska, 42 IBLA 1 (July 25, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest, or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska et al., 42 IBLA 94 (Aug. 16, 1979)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Where an applicant for a Native allotment alleges for the first time on appeal his use and occupancy of lands prior to their withdrawal, a decision rejecting the Native's application shall be vacated and the case remanded to BLM for its consideration of appellant's new evidence.

Charles L. John, 42 IBLA 260 (Aug. 27, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Alaska Mental Health Enabling Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the determination to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings. If, however, the Board affirms the finding that the requirements of patent have been met, the State will have no further administrative recourse. Where the State had not, prior to its appeal, been afforded notice of the election, it should be afforded an opportunity to make such election.

State of Alaska v. Mattie E. Bartos, 42 IBLA 269 (Aug. 27, 1979)

State of Alaska v. Daniel Johnson, 42 IBLA 370 (Sept. 11, 1979)
86 I.D. 441

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

A sufficient prima facie case by the Government does not require positive proof that there has been no discovery made or that the mining claim is nonmineral in character. Upon the Government's presentation of a prima facie case, the burden shifts to the claimant to prove by a preponderance of the evidence that he indeed has a discovery of a valuable mineral deposit within the limits of the claim.

United States v. Andy Syndbad, 42 IBLA 313 (Aug. 29, 1979)

Generally where BLM determines that an Alaska Native allotment application should be rejected because the use of the land by a minor child was not sufficiently established as an independent citizen in his own right, at least potentially exclusive of others, BLM shall issue a contest complaint pursuant to 43 CFR 4.451 *et seq.*, and the guidelines set forth in *Donald Peters*, 26 IBLA 235, 83 I.D. 308 (1976).

Sarah A. Pence et al., 43 IBLA 266 (Oct. 15, 1979)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.450 - 4.452-9.

Amy Tukrook Nukapigak, 44 IBLA 313 (Dec. 31, 1979)

CONTRACTS

(*See also* Delegation of Authority, Labor, Rules of Practice--if included in this Index.)

GENERALLY

The signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease and creates a binding contract; such a lease contract is not subject to cancellation by reason of inclusion of leased land in a known geologic structure as of a date subsequent to lease issuance.

Barbara C. Lisco, 26 IBLA 340 (Sept. 7, 1976)

A lessee of the water from a well owned by the Federal Government, who agrees that his use of the water will not be used as a basis for obtaining a permanent water right and who nevertheless proceeds to try to obtain a water right in State court based on that use, will be estopped from asserting any resulting decree of the State court for any purpose.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977)
84 I.D. 87

In the construction or interpretation of contracts, the primary purpose and guideline is the intention of the parties. A contract must be construed as a whole and the intention of the parties is to be collected from the entire instrument. Individual words and phrases must be considered in connection with the rest of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and grants appellant a rental-free revocable permit to enter the "service location," for any purpose under the contract including use of the sites for installation, operation, and maintenance of the facilities, the contract can be interpreted as granting appellant a rental-free revocable permit for a right-of-way for a gas pipeline.

In construing an ambiguous contract, the conduct of the parties in relation to such contract is to be considered in determining the meaning of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and the appellant constructs a pipeline pursuant to the contract, it is reasonable to interpret the contract as providing a revocable permit for a right-of-way for such pipeline.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

"Interest in an oil and gas lease or offer." If an oil and gas lease offeror in an oral agreement gives another person "a claim or any prospective or future claim to an advantage or benefit from a lease," there would be an interest in the lease or lease offer which must be disclosed under 43 CFR 3102.7. That an offeror might raise a technical legal defense against enforcement of such an agreement in a court does not militate

CONTRACTS--Continued

GENERALLY--Continued

against there being a claim or avoid the consequence of the disclosure regulation or 43 CFR 3112.5-2 prohibiting multiple filing in drawing procedures.

"Interest in an oil and gas lease or offer." Where affidavits submitted on appeal by an oil and gas lease offeror disclose that prior to the filing of an oil and gas lease offer the offeror orally agreed to give the person filing the offer for him either the opportunity to refuse to purchase the lease under terms and conditions that a third party would make (right of first refusal), or the opportunity to make the first offer before any other offer would be accepted (first right to buy), the offeror has given the person an interest in the offer as defined in the regulations to include a prospective claim to an advantage or benefit from a lease.

H. J. Enevoldsen, 44 IBLA 70 (Nov. 20, 1979)
86 I.D. 643

CONSTRUCTION AND OPERATION

Generally

In interpreting provisions of State leases which have been validated under sec. 6 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1335 (1970), the Department will give great weight to judicial and administrative interpretations rendered by officials of that State. Where, however, there is a conflict of opinion between State officials as to the proper interpretation of a provision of a State lease, the Department of the Interior will independently interpret that section, applying the general rules of contract construction.

Ocean Drilling & Exploration Co., Chevron Oil Co., 21 IBLA 137 (July 15, 1975)

The royalty provisions of a State lease validated under sec. 6 of the Outer Continental Shelf Lands Act will govern the determination of the royalty due to the United States.

Superior Oil Co., 31 IBLA 127 (June 30, 1977)

A short-term or temporary contract will not rescind a long-term contract under the doctrine of superseding contracts unless the parties clearly intended that to be the effect of the new agreement and the terms of the new agreement are flatly inconsistent with the former agreement.

Laws in existence at the time a contract is entered into become a part of the contract whether or not expressly referred to in the contract or incorporated in its terms.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978)
85 I.D. 297

When the Government could not require delivery of a refrigerated storage unit within the original delivery schedule because the building in which the unit was to be installed was not finished and the Government thereafter continued to negotiate changes in specifications and delivery dates with the contractor, the Board held that the Government had waived the original delivery schedule and that the Government did not regain the right to terminate the contract for default since there was no mutual agreement on a new delivery date and the Government's unilateral attempt to reestablish a specific contractual delivery date was unreasonable as

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Generally--Continued

not being within the performance capabilities of the contractor at the time the notice was given.

Appeal of Kenney Refrigeration, IBCA-1230-12-78 (Sept. 28, 1979)
86 I.D. 503

Actions of Parties

Where the practice of a construction contractor was to separate claims for an equitable adjustment for increased costs due to a change from its claims for delays to the work caused by the change and the evidence established that the contractor's delay claim resulting from a change was pending before the contracting officer at the time the contractor agreed to and executed a modification settling the equitable adjustment for direct costs attributable to the change, the Government's contention that the delay claim was barred by accord and satisfaction was rejected since it is well settled that an agreement does not operate as an accord as to matters not contemplated by the agreement.

Where the contractor's offer to perform certain changed work for a lump sum was accepted and the agreement and the price were incorporated into a modification which the contractor executed without reservation or exception and the lump sum was subsequently paid, the contractor's subsequent claim for delays to the work attributable to the change was barred by accord and satisfaction.

Appeal of Hensel Phelps Construction Co., IBCA-1010-11-73 (May 6, 1975)
82 I.D. 199

Where the action of the Government clearly contributed to the delay for which liquidated damages were assessed and there was no basis for determining the portion of the delay for which each party was responsible, the Board found that no liquidated damages could properly be charged.

Appeal of David M. Cox, Inc., IBCA-1092-12-75 (July 22, 1976)

Insertion of the words "no exceptions" in a release executed by the contractor was held not to bar further consideration of the contractor's pending request for an extension of time where the Government's instructions for executing the release dealt only with claims in stated dollar amounts and directed the contractor to insert "no exceptions" if no such claims were to be filed and where in their conduct the parties did not treat the release as final.

Appeal of Addison Construction Co., IBCA-1064-3-75 (Sept. 29, 1976)
83 I.D. 353

A second category differing site conditions claim based upon rock encountered in excavation under a construction contract is denied where the Board finds that an adequate site investigation would have revealed the presence of rock in the area where it was encountered.

Appeal of William Lagnion (Contractor), IBCA-1083-10-75 (Jan. 5, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties--Continued

A default termination is found to be proper where no special circumstances were shown to exist justifying a contractor's refusal to proceed with performance in accordance with the contracting officer's decision pending the resolution of the dispute.

Appeals of Willie H. Petterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Feb. 28, 1977)

Interpretation of the parties prior to dispute has great weight and compels conclusion that force account work included placing red dirt fill but not drying and replacing. Drying or replacement of wet borrow was not force account work and was not covered by the changes clause or changed conditions clause.

The Government failed to show that a rejected wall did not conform to the plans and specifications.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977)
84 I.D. 829

When the project supervisor for the Government takes over the direction and supervision of the contractor's work as to concrete curbing and gunite application, the Government cannot complain of defective work and require contractor to replace the work at contractor's expense.

Appeal of Murdock Construction Co., IBCA-1050-12-74 (Aug. 29, 1977)

A first category differing site condition claim based upon excessive rock encountered in excavation under a construction contract is sustained where the Board finds there was an adequate pre-bid site investigation and that the contract indications of subsurface conditions did not reveal the excessive quantities of rock in the areas where it was encountered.

A first category differing site condition claim based upon mitigating subsurface water and rock excavation encountered is sustained where the Board found that the Government knew of the subsurface mitigating water but failed to disclose such information to bidders and that both the rock and the subsurface mitigating water encountered differed materially from the contract indications.

Appeals of JBSC Co., IBCA-1020-2-74 and IBCA-1033-4-74 (Sept. 28, 1977)
84 I.D. 495

A second category differing site condition based on excessive rock drilling and inaccessability of the work site for construction of a fence is denied where the Board finds that there was an inadequate pre-bid site investigation and that an adequate investigation would have disclosed the actual conditions encountered.

Appeal of Arizona Fence Co., Inc., IBCA-1144-3-77 (Feb. 9, 1978)

In construing an ambiguous contract, the conduct of the parties in relation to such contract is to be considered in determining the meaning of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and the appellant constructs a pipeline pursuant to the contract, it is reasonable to

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties--Continued

interpret the contract as providing a revocable permit for a right-of-way for such pipeline.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

Where imponderables make it difficult to arrive at an accurate measurement of the amount of concrete placed under water, the Board finds that the amount represented by "paid for" concrete minus the amount of concrete admittedly wasted is the preferred method for determining the amount to which the contractor is entitled for the concrete so placed.

Where a contractor voluntarily signs directives specifying the payments to be made for the additional work ordered without taking any exception thereto, the unqualified acceptance of the directives involved is found to be binding upon the contractor to the extent of the direct costs entailed in performance of the additional work.

Appeal of William P. Bergan, Inc., IBCA-1130-11-76 (Feb. 2, 1979)
86 I.D. 65

Where the Government has accepted a bid conditioned upon the contractor not being prejudiced by changes resulting from energy related shortages and the parties agree in a change order to an increase in price for asphaltic materials, the Board finds the agreement does not constitute an accord and satisfaction precluding further price increases where the evidence shows there was no meeting of the minds and this was evident to the contracting officer prior to execution of the change order.

Nielsons, Inc., IBCA-1126-9-76 (Mar. 8, 1979)
86 I.D. 182

Under a CPFF contract requiring the completion of a report with on-going monthly Government review of completed portions by a small number of reviewers, the withholding of such review until a postcontract period and a significant expansion of the number of reviewers is found to constitute a change not subject to the specified cost ceiling. In the circumstances presented, the knowledge that the project office had greatly expanded the work of incorporating reviewers' comments into the contract report was imputed to the contracting officer.

Appeal of Becco Systems, Inc., IBCA-1214-9-78 (Sept. 25, 1979)
86 I.D. 478

Where the preponderance of the evidence shows that substantial increased costs were incurred by a highway construction contractor, primarily because Government inspection personnel either failed to calibrate or improperly calibrated the density testing machine used to determine compaction compliance, and it is determined that the contractor is entitled to an equitable adjustment, the Board will adopt the amount for quantum reached by the parties at a negotiated settlement, when dissatisfied with both the Government audit and the quantum computation of the contractor, but satisfied that the negotiations were made in good faith, at arm's length, and by individuals thoroughly familiar with the details of the contract and its performance.

Appeal of Nielsons, Inc., IBCA-1173-11-77 (Sept. 27, 1979)
86 I.D. 453

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs

A contractor who submitted a claim for an equitable adjustment based on rental rates for equipment idled by Government action, but failed to prove ownership of the equipment or whether a rental had taken place, was entitled only to ownership costs of the equipment reduced by one-half to allow for the lack of wear and tear on the idle equipment.

Appeal of Thorson, Inc., IBCA-993-4-73 (June 30, 1975)

Claims of constructive change under a cost-plus-fixed-fee contract first presented in the notice of appeal are outside the jurisdiction of the Board and are remanded to the contracting officer for the issuance of new or supplemental findings.

Appeal of VTN Colorado, Inc., IBCA-1073-8-75 (Oct. 29, 1975) 82 I.D. 527

Upon reconsideration, the Board finds that where the Government issues an "Extra Work Order" under a "force account" provision for minor extra work not provided for in other pay items, at agreed on rates, the contractor is entitled to be paid for inefficiency, rework costs and delay costs when moisture causes borrow material placed under the extra work order, to become muddy. However, the appellant's failure to give prompt notice of the claim under the force account provision caused the Government to order added pay item work, thus the claim must be reduced by the amount of added pay item payment.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Nov. 4, 1977) 84 I.D. 898

When the contract provides payment for the rental of specific equipment and contractor fails to rent this equipment, the Government's failure to pay for this item is not a constructive change.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Where the Government contracts with a small corporation to obtain the services of a recognized expert in fish biology and where the sum of an approximate yearly salary of $44,000 plus approximately $4,000 of fringe benefits and approximately $8,000 of life insurance premiums are compensation to the expert for a total approximate yearly compensation or corporate cost of $56,000 and where the specific contract is for approximately $1 million said compensation and costs are reasonable allowable costs under the contract.

"Fringe costs," leave, life insurance premiums, retirement plan costs, life raft for safety, are all allowable costs in the circumstances in this appeal.

Fees and expenses in the preparation and conduct of an appeal are disallowed costs of prosecution of claims against the Government.

Appeal of W. F. Sigler & Associates, IBCA-1159-7-77 (Feb. 16, 1978) 85 I.D. 41

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs--Continued

Where a cost-plus-fixed-fee contract contains specified ceilings on reimbursement for general and administrative expenses and rates for certain consultants, such ceilings are found to apply to the entire contract, including a second phase initiated by the timely exercise of an option in the contract.

Costs reimbursable to a contractor under a cost-plus-fixed-fee contractor are found to exclude those portions of an executive's salary properly chargeable to work outside the scope of the contract, but the costs of low-cost cameras and recorders necessary to performance are allowed as materials and supplies because the conditions under which they were used made them expendable material.

Appeal of Environmental Associates, Inc., IBCA-1128-10-76 (Aug. 15, 1978) 85 I.D. 349

Where a finding is made by the Board on the extent of the Government's liability to the contractor, any moneys previously allowed and paid pursuant to a contracting officer's decision on the same claims shall be deducted from the gross amount allowed in order to determine the net amount payable to the contractor.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

Under a CPFF contract requiring the completion of a report with on-going monthly Government review of completed portions by a small number of reviewers, the withholding of such review until a postcontract period and a significant expansion of the number of reviewers is found to constitute a change not subject to the specified cost ceiling. In the circumstances presented, the knowledge that the project office had greatly expanded the work of incorporating reviewers' comments into the contract report was imputed to the contracting officer.

Appeal of Recon Systems, Inc., IBCA-1214-9-78 (Sept. 25, 1979) 86 I.D. 478

Assignment of Claims

An assignee under an assignment of the proceeds of a contractor's claim before the Board which had been executed subsequent to completion of performance and the filing of the appeal by the contractor, is not permitted to participate in the appeal, since the Board's jurisdiction, pursuant to the Disputes clause, extends only to the parties to the contract or to their duly qualified successors.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (Jan. 14, 1975)

A permit for use of land in the Lower Colorado River Area is properly terminated where construction, unauthorized by the terms of the permit, is undertaken by individuals occupying the premises, whose earlier application for an assignment of rights of the permittee has been rejected by BLM.

Robert C. Hall, C-79-7 (Aug. 23, 1979)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions (Differing Site Conditions)

Interpretation of the parties prior to dispute has great weight and compels conclusion that force account work included placing red dirt fill but not drying and replacing. Drying or replacement of wet borrow was not force account work and was not covered by the changes clause or changed conditions clause.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

While the wind at the work site was severe, the Board found that no changed condition had been shown.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978) 85 I.D. 107

Where a clearing contractor claims entitlement to an equitable adjustment based on the standard Differing Site Conditions clause of the contract, and the evidence shows that the principal causes of any increased costs which may have been incurred were heavy rains and failure of the contractor to make a reasonable prebid investigation of the site or examination of specifications, and no evidence of fault on the part of the Government is presented, the Board holds that the contractor has not sustained its burden of proof for entitlement to an equitable adjustment, and the appeal will be denied.

Appeal of M & P Equipment Co., IBCA-1088-11-75 (Sept. 26, 1979) 86 I.D. 527

Changes and Extras

A multi-item appeal under a contract for construction of a fish barrier is sustained for those items where Government changes in the contract resulted in extra expense and where such expense could be determined from the record.

Appeal of Robert P. Jones (Contractor), IBCA-1002-8-73 (May 6, 1975)

Where a contract for the construction of a bridge substructure contained a provision requiring that employees erecting bridges and structures be protected by safety nets where the use of safety belts and lifelines or other conventional type of protection was impractical and the evidence failed to demonstrate that the use of safety belts and lifelines or other conventional type of protection was practical for workers on concrete piers, the Board denies the contractor's claim for a change based on the fact that it was required to use safety nets to protect workmen from possible falls.

Appeal of Hensel Phelps Construction Co., IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

A rise in the cost of materials after a fixed price construction contract is executed is not a change within the Changes clause of the contract.

Appeal of The Minnesota Chippewa Tribe, IBCA-1025-3-74 (May 19, 1975) 82 I.D. 238

Appeal of The Minnesota Chippewa Tribe Construction Co., IBCA-1063-3-75 (July 23, 1975)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

A construction contractor's claim for an equitable adjustment based on alleged defective specifications and for corrective work ordered by the Government as a condition to final acceptance of the project was denied, where the specification errors relied upon were obvious, there was no evidence that the contractor had been thereby misled to its detriment and the record did not establish that the corrective work ordered and performed was beyond the requirements of the contract. A claim for costs incurred in replacing door locks was allowed where the evidence established that locks ordered installed by the contracting officer were not a requirement of the contract.

Appeal of J. D. Piercey, IBCA-1035-6-74 (July 18, 1975)

The Government failed to sustain its burden of proving entitlement to a reduction of the contract price as an equitable adjustment for quantities of asphalt concrete for road repair in excess of the Government estimate. The evidence showed that neither party relied on the estimate, that the Government left the selection and manner of using equipment to the contractor and that the Government issued a change order when it observed the contractor's more efficient operation. The work described in the change order was the same work described in the contract and the reduction in unit cost of performance was not the result of the change order but was the result of the contractor's efficiency.

Appeal of Quintana Construction Co., Inc., IBCA-1028-4-74 (July 24, 1975) 82 I.D. 343

Under a construction contract for a beach nourishment project at Cape Hatteras involving a contractor's claim for equitable adjustment based upon the Government directing the beach fill to be placed in a manner differing from the typical cross section shown on the contract drawing, the Board finds that the 20-day notice provision of the Changes clause should not preclude consideration of the claim on the merits where there is no one action of the Government which can be pointed to as the identifiable event upon which the claim is grounded and from which the contractor's delay in presenting the claim can be measured, particularly where the evidence of record indicates that the Government's actions contributed to and may even have been the principal cause of the delay in giving notice of the claim.

A special provision authorizing the contracting officer to adjust or revise the limits of the work during performance to reflect the conditions encountered and thereby provide for maximum use of material available with the funds allotted is found to vest the contracting officer with no plenary authority to direct the placement of the beach fill where the authorization to adjust or revise the limits of the work is circumscribed by the use of the word "approximate."

In a case involving the question of the importance to be ascribed to the typical cross section shown on the contract drawings, the Board finds that the drawings contained positive representations on which the contractor was entitled to rely and did rely in submitting its bid, noting, in connection therewith, that the interpretation advanced by the Government with respect to certain provisions on the drawings, in the contract and in a change order would render inoperative or superfluous other requirements clearly imposed by the drawings or contract terms. Previously the Board had found that the contractor's site visit was adequate and in any event could not have revealed conditions created by

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

storms which took place several months after the scheduled site visit concluded.

An estimated quantities provision under which the Government was authorized to obtain additional quantities of beach fill at the unit price specified in the contract so long as the additional quantities did not exceed 25 percent of the original total contract price is found not to preclude an adjustment under the Changes clause for clearly unforeseeable costs to the extent the contractor shows (i) the basis upon which its bid was calculated and (ii) the causal connection between the increased costs and the inability or the failure of the Government to adhere to the typical cross section shown on the contract drawings in directing the placement of the fill.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Claims of constructive change under a cost-plus-fixed-fee contract first presented in the notice of appeal are outside the jurisdiction of the Board and are remanded to the contracting officer for the issuance of new or supplemental findings.

Appeal of VTN Colorado, Inc., IBCA-1073-8-75 (Oct. 29, 1975) 82 I.D. 527

A claim for acceleration under a contract for the construction of footings for a transmission line is denied where one of appellant's principal contentions was that in a telephone conversation following record snow in late September the project engineer had directed that men and equipment be added to the job in order to finish the work by the contract completion date of Nov. 1, but in correspondence conducted with the Government for almost 6 months after such telephone conversation the contractor failed to refer to the directions purportedly received from the project engineer and even failed to reference the particular telephone conversation. Actions taken by the Government's principal inspector were also found not to constitute acceleration orders when the evidence clearly showed that both parties viewed the inspector's action as involving suggestions rather than directions and that whether the suggestions were accepted by the contractor's job superintendent depended upon the exercise of his business judgment.

Appeal of Iversen Construction Co. (a/k/a Iconco), IBCA-981-1-73 (Dec. 30, 1975) 82 I.D. 646

Appellant's claim for an equitable adjustment under the changes clause for costs alleged to have been incurred when funds available for earnings became exhausted and work on the contract was suspended for 160 days is denied where construction was suspended more than 3 months ahead of the date on which appellant's earnings were scheduled to reach the amount of the fund reservation and where subsequent fund reservations kept the total amount of funds reserved for earnings above the scheduled earnings shown in appellant's own construction program which the Government had approved.

Appeal of S. A. Healy Co., IBCA-944-12-71 (Mar. 31, 1976) 83 I.D. 118

Cross motions for summary judgment are denied where the Board finds the stipulated record furnishes an insufficient basis for an informed judgment and that a hearing will be required for determining the merits of the entitlement question presented for decision.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA-1072-7-75 (Apr. 7, 1976) 83 I.D. 148

Where in moving for reconsideration of a decision denying its claim for constructive acceleration, the contractor contended that the Bureau's failure to promptly investigate its claim of delay due to unusually severe weather amounted to a denial of a request for a time extension and that the denial plus other actions of Bureau inspectors constituted an order to complete the work by the specified completion date irrespective of excusable delay and thus was an acceleration order, the Board ruled that a denial of a request for a time extension was insufficient in and of itself to constitute constructive acceleration and reviewing the evidence, affirmed the denial of the claim, holding that the actions of the inspectors were regarded as suggestions by the contractor and accepted or rejected depending on whether the suggestions were practical or economical.

Appeal of Iversen Construction Co. (a/k/a ICONCO), IBCA-981-1-73 (Apr. 19, 1976) 83 I.D. 179

A claim for extra work is denied where the appellant does not even undertake to show why the work was considered to be beyond the requirements of the contract.

Appeals of Willie H. Patterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Feb. 28, 1977)

When contractor unilaterally performs work not required by the contract nor at the direction of the Government, it is not entitled to an equitable adjustment.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

The Government's motion to dismiss an appeal because of the failure of the contractor to give the 20-day written notice required by the Changes clause is denied, where the Board finds that there was timely notice with respect to some of the costs on which the claim is based and that the hearing to be held may show that some or all of the remaining costs fall within other recognized exceptions to the strict application of the 20-day cost-limitation provision.

Appeal of Hartford Accident and Indemnity Co., IBCA-1139-1-77 (June 23, 1977) 84 I.D. 296

An allegation by the contractor that it was "required" to accept an amount smaller than its invoice for a change in order to avoid assessment of liquidated damages was not sustained where the contractor failed to prove (1) that it involuntarily accepted the Government's terms, (2) that the circumstances permitted no alternative and (3) that the circumstances were the result of coercive acts of the Government.

Appeal of Great Eastern Enterprises Corp., IBCA-1113-7-76 (July 15, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

Interpretation of the parties prior to dispute has great weight and compels conclusion that force account work included placing red dirt fill but not drying and replacing. Drying or replacement of wet borrow was not force account work and was not covered by the changes clause or changed conditions clause.

An order to build a curved wall was a constructive change outside change order #1 which was for a straight wall. Thus, the claim for extra costs for curved construction and for stand-by time caused by the Government delay in staking wall is compensable.

Claimant has the burden of proof of extra work and failed to establish that in placing utility lines the actual work performed differed from contractually required work.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

When the project supervisor for the Government takes over the direction and supervision of the contractor's work as to concrete curbing and gunite application, the Government cannot complain of defective work and require contractor to replace the work at contractor's expense.

When the specifications are defective as to the grout mixture and the Government changes the mixture but the specifications are still defective, the contractor cannot be held liable for defective results in its work.

Contractor has a right to rely upon the accuracy of land profiles in the drawings to prepare its bid and if the land profile is not accurate, necessitating additional excavation, contractor is entitled to recover its additional cost.

Appeal of Murdock Construction Co., IBCA-1050-12-74 (Aug. 29, 1977)

Where the contract required separated excavation and stockpiling of topsoil and the restoration of rights-of-way as near as practicable to pre-existing conditions, claims for complying with the Government's directions to strip 12 feet in width on one side of the trench to store unsuitable material other than topsoil and to handpick rocks from the covered trench are sustained because the directed work was beyond what was necessary to satisfy the contract requirements and constituted a constructive change.

Appeals of JB&C Co., IBCA-1020-2-74 and IBCA-1033-4-74 (Sept. 28, 1977) 84 I.D. 495

When the contract requires the pipe to be laid in a trench 18 inches in depth measured from the center line of the pipe to the top of the ground line or on top of the ground with 18 inches of cover if rock strata is encountered, the contractor cannot sustain an allegation of a constructive change when the Government insists the requirements be followed and objects to contractor laying the pipe in a trench less than 18 inches in depth.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

Where the contract required the construction of a fence on the boundary of a national monument and the appellant disregarded NPS instructions to visit the monument headquarters for information pertinent to bidding and disregarded other specific requirements of the specifications regarding the permissible methods of transporting materials to the work site, claims for increased costs of performance are denied because the costs resulted from appellant's failure to make an adequate pre-bid site investigation and to plan to perform in accordance with the specification requirements.

Appeal of Arizona Fence Co., Inc., IBCA-1144-3-77 (Feb. 9, 1978)

When the Government erroneously places stakes to locate the worksite--a road--it is liable for extra costs caused thereby.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978) 85 I.D. 107

Where the Government contracts for the surfacing of a road on an existing subgrade without knowledge of the actual condition of the subgrade and without disclosing that the subgrade was constructed of unknown soils without regard to any specification or testing standard and such subgrade breaks up under the normal traffic of the surfacing contractor's construction equipment, the omission of the Government to specify the actual condition of the subgrade is held to constitute a defect in the specifications, entitling the contractor to an equitable adjustment for the extra work occasioned by the defective specifications.

Buck Brown Contracting Co., Inc., IBCA-1119-7-76 (Aug. 1, 1978)

The contractor's claim that the Government's use of the word "subgrade" in the earthwork specifications created an ambiguity which should be construed against the drafter was denied. The "contra proferentem" rule is not applicable in this instance because the definition propounded by the contractor was not reasonable, use of the word in the specified context did not create an ambiguity, the contractor did not register an objection when informed of the Government's interpretation, and no evidence was presented to show that the contractor relied on its alleged interpretation at the time of bidding.

Where the Government's engineer recorded in his daily diary a verbal protest made by the contractor about embankment compaction difficulties and the inaccuracy of the proctor information furnished by the Government, this satisfied the 20-day notice requirement of the changes clause with respect to some of the claims. It was unnecessary to finally decide the scope of such notice, however, where the Board found the claims to be without merit in any event.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978) 85 I.D. 353

Where a contract does not specify the exact method to be used by the contractor in performing manhole renovations, the contractor may proceed according to the industry standard. The Board finds that sandblasting

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

was an acceptable and adequate method to renovate manholes and that the Government's requirement to use a more costly method was unwarranted.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76
(Nov. 22, 1978)

The state of the weather at any given time cannot be predicted with absolute certainty. Absent an express contractual assumption of the risk by the Government, the contractor must bear the risk of increases in the cost of the work caused by a flood.

Appeal of Brown & Root Western, Inc., IBCA-1220-10-78
(Apr. 13, 1979)

Where the Board finds that the Contracting Officer's Representative required the contractor to expend more effort in field surveys and data collection than required by the contract documents, a constructive change will be found to have occurred.

Appeal of Environmental Consultants, Inc., IBCA-1192-5-78
(June 29, 1979) 86 I.D. 349

Under a CPFF contract requiring the completion of a report with on-going monthly Government review of completed portions by a small number of reviewers, the withholding of such review until a postcontract period and a significant expansion of the number of reviewers is found to constitute a change not subject to the specified cost ceiling. In the circumstances presented, the knowledge that the project office had greatly expanded the work of incorporating reviewers' comments into the contract report was imputed to the contracting officer.

Appeal of Recon Systems, Inc., IBCA-1214-9-78 (Sept. 25, 1979) 86 I.D. 478

Where the preponderance of the evidence shows that substantial increased costs were incurred by a highway construction contractor, primarily because Government inspection personnel either failed to calibrate or improperly calibrated the density testing machine used to determine compaction compliance, and it is determined that the contractor is entitled to an equitable adjustment, the Board will adopt the amount for quantum reached by the parties at a negotiated settlement, when dissatisfied with both the Government audit and the quantum computation of the contractor, but satisfied that the negotiations were made in good faith, at arm's length, and by individuals thoroughly familiar with the details of the contract and its performance.

Appeal of Nielsons, Inc., IBCA-1173-11-77 (Sept. 27, 1979) 86 I.D. 493

Where the Government does not issue a written change order and does not give a verbal order which is interpreted by the contractor as a change, no contract change has occurred and the contractor may submit materials conforming to the original specifications. The Government's mere exercise of its option to accept nonconforming goods does not in and of itself constitute a contract change.

Appeal of Wasatka & Sons, Inc., IBCA-1157-6-77
(Sept. 28, 1979) 86 I.D. 513

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Conflicting Clauses

In a case involving the question of the importance to be ascribed to the typical cross section shown on the contract drawings, the Board finds that the drawings contained positive representations on which the contractor was entitled to rely and did rely in submitting its bid, noting, in connection therewith, that the interpretation advanced by the Government with respect to certain provisions on the drawings, in the contract and in a change order would render inoperative or superfluous other requirements clearly imposed by the drawings or contract terms. Previously the Board had found that the contractor's site visit was adequate and in any event could not have revealed conditions created by storms which took place several months after the scheduled site visit concluded.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73
(Sept. 29, 1975) 82 I.D. 459

Appellant's claim for an equitable adjustment under the changes clause for costs alleged to have been incurred when funds available for earnings became exhausted and work on the contract was suspended for 160 days is denied where construction was suspended more than 3 months ahead of the date on which appellant's earnings were scheduled to reach the amount of the fund reservation and where subsequent fund reservations kept the total amount of funds reserved for earnings above the scheduled earnings shown in appellant's own construction program which the Government had approved.

Appeal of S. A. Healy Co., IBCA-944-12-71 (Mar. 31, 1976) 83 I.D. 118

Construction Against Drafter

The Board denies a construction contractor's claim for additional pay quantities where the evidence did not establish a basis for application of the rule of *contra proferentem*, the contractor's interpretation of the specifications was not shown to be reasonable and the record did not establish error in the Bureau's computation of pay quantities.

Appeal of Wm. V. Montin d/b/a Montin Construction Co., IBCA-1051-12-74 (May 29, 1975)

The Board sustains the contractor's claim that it be paid for gravel representing the area of the pipe within the pay lines, holding that in the particular circumstances the contractor's interpretation that the pay line quantity was merely nominal or hypothetical was reasonable and rejecting the Government's contention that the difference between the estimated quantity and the pay quantity under appellant's interpretation should have prompted appellant to inquire of the contracting officer.

Appeal of Whalen & Co., IBCA-1034-5-74 (July 18, 1975)
82 I.D. 335

Where the contract required hand planing of the top surface of the flooring to remove machine marks and the contractor hand planed only those areas where machine marks were present, the Government was not entitled to require hand planing of areas where machine marks were not present since, as drafter of the specification, the Government could have required hand planing of the entire surface but did not.

Appeal of Great Eastern Enterprises Corp., IBCA-1113-7-76 (July 15, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Construction Against Drafter--Continued

When the contractor's interpretation of the contractual clauses is reasonable the Government cannot impose its own interpretation, since the Government, as the drafter, could have been explicit in conveying its intent but failed to do so.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (July 15, 1977) 84 I.D. 407

The contractor's claim that the Government's use of the word "subgrade" in the earthwork specifications created an ambiguity which should be construed against the drafter was denied. The "contra proferentem" rule is not applicable in this instance because the definition propounded by the contractor was not reasonable, use of the word in the specified context did not create an ambiguity, the contractor did not register an objection when informed of the Government's interpretation, and no evidence was presented to show that the contractor relied on its alleged interpretation at the time of bidding.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978) 85 I.D. 353

Where a prospective contractor does not spot hidden or subtle ambiguities in the bid documents, it is protected if it innocently and reasonably construes an ambiguity in its own favor.

Appeal of BHC Construction, Inc., IBCA-1207-9-78 (June 26, 1979)

Contract Clauses

Where a contract for furnishing and erecting a steel building was terminated for default and the contractor appealed the termination contending that the specifications were written around the product of a particular manufacturer and that under the material and workmanship clause of the General Provisions (Standard Form 23-A, Oct. 1969 Edition) it was entitled to furnish an "equal" product, the Board holds that the restrictive nature of the specifications is no defense to the termination where the evidence fails to establish that the building offered was, in fact, equal to the building described in the specifications.

Appeal of J. D. Piercey, IBCA-1013-12-73 (Oct. 17, 1975)

Under a contract requiring the use of grout the Board denies a contractor's claim where it finds the terms of the specifications dispositive of the question presented.

Appeal of Whalen & Co., IBCA-1066-3-75 (May 26, 1976)

When contractor unilaterally performs work not required by the contract nor at the direction of the Government, it is not entitled to an equitable adjustment.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses--Continued

Where a transformer failed shortly after being placed in service and the contractor acted promptly after notice to return the transformer to the factory for repairs at no cost to the Government, the Board held that the Government could not invoke provisions of the inspection clause of the contract relating solely to correction of defects at the point of installation to charge the contractor with the costs of removing and reinstalling the transformer.

Appeal of Traver Engineering Corp., IBCA-1100-3-76 (Mar. 31, 1977) 84 I.D. 168

Upon reconsideration, the Board finds that where the Government issues an "Extra Work Order" under a "force account" provision for minor extra work not provided for in other pay items, at agreed on rates, the contractor is entitled to be paid for inefficiency, rework costs and delay costs when moisture causes borrow material placed under the extra work order, to become muddy. However, the appellant's failure to give prompt notice of the claim under the force account provision caused the Government to order added pay item work, thus the claim must be reduced by the amount of added pay item payment.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Nov. 4, 1977) 84 I.D. 858

When the contract requires the pipe to be laid in a trench 18 inches in depth measured from the center line of the pipe to the top of the ground line or on top of the ground with 18 inches of cover if rock strata is encountered, the contractor cannot sustain an allegation of a constructive change when the Government insists the requirements be followed and objects to contractor laying the pipe in a trench less than 18 inches in depth.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Payment was not allowed under a general erosion control clause when there was no order by the CCAB citing that clause to replace roadbed blown away by severe winds.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978) 85 I.D. 107

Where a contractor accepted a contract containing a clause limiting an equitable adjustment for profit to 15 percent of the cost of changed work, he is bound by the limitation even though his contract price of $1.31 per cubic yard of sand exceeded his estimated contract costs of 75 cents per cubic yard by more than 15 percent.

Where the Board finds an interest clause to be incorporated into a contract by operation of law and the clause requires the contracting officer to make certain findings thereunder but the contractor's claim for interest has been presented only to the Board and not to the contracting officer, the Board remands the claim for interest to the contracting officer for a determination of the interest due in accordance with the clause.

Appeal of J. A. LaPorte, Inc., IBCA-1146-3-77 (July 6, 1978) 85 I.D. 242

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses--Continued

The contractor's claim that the Government's use of the word "subgrade" in the earthwork specifications created an ambiguity which should be construed against the drafter was denied. The "contra proferentem" rule is not applicable in this instance because the definition propounded by the contractor was not reasonable, use of the word in the specified context did not create an ambiguity, the contractor did not register an objection when informed of the Government's interpretation, and no evidence was presented to show that the contractor relied on its alleged interpretation at the time of bidding.

Where the contracting officer by contract was given discretion in setting the moisture requirement for high volume change soils, the contractor's claim of extra compaction work due to rigid moisture requirements was denied because the contractor failed to show that the contracting officer abused his discretion or that the discretion exercised caused the contractor extra contract costs.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978)
85 I.D. 353

Contracting Officer

A special provision authorizing the contracting officer to adjust or revise the limits of the work during performance to reflect the conditions encountered and thereby provide for maximum use of material available with the funds allotted is found to vest the contracting officer with no plenary authority to direct the placement of the beach fill where the authorization to adjust or revise the limits of the work is circumscribed by the use of the word "approximate."

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73
(Sept. 29, 1975) 82 I.D. 459

Motions to add four claims were granted in part and denied in part on the basis of the Board's findings that the contracting officer had or had not had a reasonable time within which to decide the specific claim.

Appeal of W. F. Sigler & Associates, IBCA-1159-7-77
(Sept. 27, 1977) 84 I.D. 483

Where the Board finds an interest clause to be incorporated into a contract by operation of law and the clause requires the contracting officer to make certain findings thereunder but the contractor's claim for interest has been presented only to the Board and not to the contracting officer, the Board remands the claim for interest to the contracting officer for a determination of the interest due in accordance with the clause.

Appeal of J. A. LaPorte, Inc., IBCA-1146-3-77 (July 6,
1978) 85 I.D. 242

Where the contracting officer by contract was given discretion in setting the moisture requirement for high volume change soils, the contractor's claim of extra compaction work due to rigid moisture requirements was denied because the contractor failed to show that the contracting officer abused his discretion or that the discretion exercised caused the contractor extra contract costs.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978)
85 I.D. 353

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contractor

Contractor must have adequate equipment and personnel to perform the work required by the contract.

Appeal of Kent Nicoll, IBCA-1040-8-74 (July 31, 1975)

When the contract requires contractor to furnish all labor and equipment to perform all necessary operations, contractor has a duty to provide appropriate equipment to accomplish the work.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

Differing Site Conditions (Changed Conditions)

A second category differing site conditions claim based upon rock encountered in excavation under a construction contract is denied where the Board finds that an adequate site investigation would have revealed the presence of rock in the area where it was encountered.

A first category differing site conditions claim based on the encountering of subsurface waterlines not shown on the contract drawings in the vicinity of a fish hatchery building is denied, where the Board finds that except for the unsupported allegations of the contractor there is nothing in the record to indicate that the experienced subcontractor who performed required excavation in the area where the buried waterlines were located failed to anticipate the conditions he actually encountered.

Although a first category differing site conditions claim is established by the presence of a septic tank in an area where the plans indicate a sewage treatment plant was slated to go, a contractor's claim based thereon is denied where the evidence shows that the location of the sewage treatment plant was changed before any significant amount of work was done in the area where the septic tank was located.

Appeal of William Lagnion (Contractor), IBCA-1063-10-75
(Jan. 5, 1977)

Encountering substantial numbers of granite slabs at a construction site in downtown Philadelphia (when the contract documents and site report indicated the area consisted of buildings razed and covered during a prior period) did not constitute a differing site condition.

Appeal of J. J. White, Inc., IBCA-1131-11-76 (Aug. 25,
1977)

A first category differing site condition claim based upon excessive rock encountered in excavation under a construction contract is sustained where the Board finds there was an adequate pre-bid site investigation and that the contract indications of subsurface conditions did not reveal the excessive quantities of rock in the areas where it was encountered.

A first category differing site condition claim based upon mitigating subsurface water and rock excavation encountered is sustained where the Board found that the Government knew of the subsurface mitigating water but failed to disclose such information to bidders and that both the rock and the subsurface mitigating water encountered differed materially from the contract indications.

Appeals of JBEC Co., IBCA-1020-2-74 and IBCA-1033-4-74
(Sept. 28, 1977) 84 I.D. 495

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Differing Site Conditions (Changed Conditions) --Continued

A second category differing site condition based on excessive rock drilling and inaccessability of the work site for construction of a fence is denied where the Board finds that there was an inadequate pre-bid site investigation and that an adequate investigation would have disclosed the actual conditions encountered.

Appeal of Arizona Fence Co., Inc., IBCA-1144-3-77 (Feb. 9, 1978)

A first category differing site condition under a well drilling contract is found where the contract indications of subsurface conditions did not reveal an extensive alluvial deposit strewn with boulders, and the subsurface conditions could not be determined by a prebid site investigation.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Sept. 26, 1978) 85 I.D. 384

Where the prime contractor claims damages against the Government stemming from differing site conditions encountered by its subcontractor, and the prime contractor and subcontractor have settled these same claims in an independent proceeding, the Government's liability to the prime contractor is limited to the amount of the settlement.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

Drawings and Specifications

Where a contract for the construction of a bridge substructure contained a provision requiring that employees erecting bridges and structures be protected by safety nets where the use of safety belts and lifelines or other conventional type of protection was impractical and the evidence failed to demonstrate that the use of safety belts and lifelines or other conventional type of protection was practical for workers on concrete piers, the Board denies the contractor's claim for a change based on the fact that it was required to use safety nets to protect workmen from possible falls.

Appeal of Hensel Phelps Construction Co., IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

The Board denies a construction contractor's claim for additional pay quantities where the evidence did not establish a basis for application of the rule of contra proferentem, the contractor's interpretation of the specifications was not shown to be reasonable and the record did not establish error in the Bureau's computation of pay quantities.

Appeal of Wm. V. Montin d/b/a Montin Construction Co., IBCA-1051-12-74 (May 29, 1975)

The Board sustains the contractor's claim that it be paid for gravel representing the area of the pipe within the pay lines, holding that in the particular circumstances the contractor's interpretation that the pay line quantity was merely nominal or hypothetical was reasonable and rejecting the Government's contention that the difference between the estimated quantity and the pay quantity under appellant's interpretation should have prompted appellant to inquire of the contracting officer.

Appeal of Whalen & Co., IBCA-1034-5-74 (July 16, 1975) 82 I.D. 335

Under a construction contract for a beach nourishment project at Cape Hatteras involving a contractor's claim for equitable adjustment based upon the Government directing the beach fill to be placed in a manner differing from the typical cross section shown on the contract drawing, the Board finds that the 20-day notice provision of the Changes clause should not preclude consideration of the claim on the merits where there is no one action of the Government which can be pointed to as the identifiable event upon which the claim is grounded and from which the contractor's delay in presenting the claim can be measured, particularly where the evidence of record indicates that the Government's actions contributed to and may even have been the principal cause of the delay in giving notice of the claim.

In a case involving the question of the importance to be ascribed to the typical cross section shown on the contract drawings, the Board finds that the drawings contained positive representations on which the contractor was entitled to rely and did rely in submitting its bid, noting, in connection therewith, that the interpretation advanced by the Government with respect to certain provisions on the drawings, in the contract and in a change order would render inoperative or superfluous other requirements clearly imposed by the drawings or contract terms. Previously the Board had found that the contractor's site visit was adequate and in any event could not have revealed conditions created by storms which took place several months after the scheduled site visit concluded.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Where the action of the Government clearly contributed to the delay for which liquidated damages were assessed and there was no basis for determining the portion of the delay for which each party was responsible, the Board found that no liquidated damages could properly be charged.

Appeal of David M. Cox, Inc., IBCA-1092-12-75 (July 22, 1976)

The Government failed to show that a rejected wall did not conform to the plans and specifications.

Claimant has the burden of proof of extra work and failed to establish that in placing utility lines the actual work performed differed from contractually required work.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

When the specifications are defective as to the grout mixture and the Government changes the mixture but the specifications are still defective, the contractor cannot be held liable for defective results in its work.

Contractor has a right to rely upon the accuracy of land profiles in the drawings to prepare its bid and

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications--Continued

if the land profile is not accurate, necessitating additional excavation, contractor is entitled to recover its additional cost.

Appeal of Murdock Construction Co., IBCA-1050-12-74 (Aug. 29, 1977)

When the contract requires the pipe to be laid in a trench 18 inches in depth measured from the center line of the pipe to the top of the ground line or on top of the ground with 18 inches of cover if rock strata is encountered, the contractor cannot sustain an allegation of a constructive change when the Government insists the requirements be followed and objects to contractor laying the pipe in a trench less than 18 inches in depth.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

When the specifications state that either of two types of cement mixers may be used and the use of one results in unexpected and unusual movement of the subbase which weakens the specified cement base, the Board finds that the specifications and design are defective.

A drawing in the bid package, which showed the concrete road base extending right to the edge of the underlying corner of the builtup supporting subbase, was found to be defective and misleading when during construction it was found that the upper corners of the sandy subbase would not support the road grading equipment needed and used to grade the concrete shoulders of the road, with the result that the subbase shoulders gave way and the road grading equipment slipped off the embankment. The appellant was entitled to the reasonable added costs of building wider subbase shoulders to remedy the omission from the drawing.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978) 85 I.D. 107

Where evidence established that cause of failure of cantilever lintel and collapse of masonry wall was improper original shoring, as well as noncompliance with appropriate directions in reshoring process, on part of construction contractor's employees, and where evidence further showed that drawings and specifications were followed in construction of similar lintels on same project with successful result, the Board finds such drawings and specifications to be neither defective nor inadequate.

Appeal of CSH Contractors, Inc., IBCA-1107-4-76 (May 25, 1978) 85 I.D. 146

The Board finds contract specifications to be defective where an elevation shown on the drawings fails to coincide with the actual elevation at the site causing extra work and additional costs with respect to the installation of riprap.

G.T.S. Co., Inc., IBCA-1077-9-75 (Sept. 15, 1978) 85 I.D. 373

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications--Continued

When the Government issues a contract which, unknown to the contractor, is defective because insufficient borrow is available from the designated borrow sites, and thereafter the Government issues three de facto change orders, at three different times, to make sufficient borrow available, and where the record discloses that the Government failed to reveal preaward knowledge that haul or overhaul would be required and that it had decided to substantially alter a borrow depth limit on the drawings, the Government is liable under the changes clause for the additional costs shown to be attributable to the Government's actions.

A dispute as to pay quantities under a construction contract is resolved in favor of the contractor where his interpretation of the specification paragraph in issue gives effect to all the language of the particular provision and is consistent with the construction placed upon the specifications and drawings by the Government employees responsible for their preparation. A Government's counterclaim involving a portion of the disputed pay quantities is denied.

Where under a standard construction contract the liability of the Government for defective plans and specifications is clearly established but as a consequence of the contractor having failed to segregate the costs applicable to the constructive change it is not possible to determine precisely the extent to which the Government's actions increased the cost of performance, the amount of the equitable adjustment to which the contractor is entitled is determined by the Board finding whether particular costs are allowable where that is possible and drawing inferences from the entire record where it is not possible to otherwise determine the proper allowances to be made for various aspects of the claimed amount.

Claims for extra costs incurred in the concrete lining of a canal attributed to heat encountered during delayed performance allegedly caused by defective plans and specifications is denied, where the Board finds that the delays experienced were the result of actions or inactions for which the contractor was responsible including (i) the failure to have necessary equipment operational weeks after concrete placement was to commence according to the contractor's plan; (ii) the hiring of incompetent carpenters; and (iii) the manner in which the contractor chose to place outlet structures.

A&J Construction Co., Inc., IBCA-1142-2-77 (Dec. 26, 1978) 85 I.D. 466

Where the evidence clearly establishes that the Government specifications were defective in a number of respects but fails to show that many of the costs claimed are attributable to actions of the Government, the Board--noting that it is impossible to determine the amount to which the contractor is entitled with mathematical exactness--finds that the "jury verdict" method of determining the amount of the equitable adjustment is the most appropriate method in the circumstances presented by the instant appeal.

Appeal of William F. Bergan, Inc., IBCA-1130-11-76 (Feb. 2, 1979) 86 I.D. 65

Duty to Inquire

Where a request for proposals for the construction of a pipeline provided that certain pipe and fittings for the pipeline would be furnished by the Government and appellant's proposal, reasonably interpreted, excepted to material the request for proposals provided was to be furnished by the contractor, the Board sustains the contractor's claim for material it furnished, holding that the Bureau, in failing to seek confirmation of its

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Duty to Inquire--Continued

interpretation of appellant's proposal, accepted the risk of the accuracy of its interpretation.

Appeal of Wm. V. Montin d/b/a Montin Construction Co., IBCA-1051-12-74 (May 29, 1975)

The Board sustains the contractor's claim that it be paid for gravel representing the area of the pipe within the pay lines, holding that in the particular circumstances the contractor's interpretation that the pay line quantity was merely nominal or hypothetical was reasonable and rejecting the Government's contention that the difference between the estimated quantity and the pay quantity under appellant's interpretation should have prompted appellant to inquire of the contracting officer.

Appeal of Whalen & Co., IBCA-1034-5-74 (July 18, 1975)
82 I.D. 335

Where a clearing contractor claims entitlement to an equitable adjustment based on the standard Differing Site Conditions clause of the contract, and the evidence shows that the principal causes of any increased costs which may have been incurred were heavy rains and failure of the contractor to make a reasonable prebid investigation of the site or examination of specifications, and no evidence of fault on the part of the Government is presented, the Board holds that the contractor has not sustained its burden of proof for entitlement to an equitable adjustment, and the appeal will be denied.

Appeal of M & P Equipment Co., IBCA-1088-11-75 (Sept. 28, 1979)
86 I.D. 527

Estimated Quantities

The Government failed to sustain its burden of proving entitlement to a reduction of the contract price as an equitable adjustment for quantities of asphalt concrete for road repair in excess of the Government estimate. The evidence showed that neither party relied on the estimate, that the Government left the selection and manner of using equipment to the contractor and that the Government issued a change order when it observed the contractor's more efficient operation. The work described in the change order was the same work described in the contract and the reduction in unit cost of performance was not the result of the change order but was the result of the contractor's efficiency.

Appeal of Quintana Construction Co., Inc., IBCA-1028-4-74 (July 24, 1975)
82 I.D. 343

An estimated quantities provision under which the Government was authorized to obtain additional quantities of beach fill at the unit price specified in the contract so long as the additional quantities did not exceed 25 percent of the original total contract price is found not to preclude an adjustment under the Changes clause for clearly unforeseeable costs to the extent the contractor shows (i) the basis upon which its bid was calculated and (ii) the causal connection between the increased costs and the inability or the failure of the Government to adhere to the typical cross section shown on the contract drawings in directing the placement of the fill.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975)
82 I.D. 459

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Estimated Quantities--Continued

A summary of estimated quantities is a guide as to amounts of work to be increased or decreased.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1055-2-75 (Mar. 3, 1977)

Where the bid package drawings listed estimated quantities and the general and special conditions indicated payment would be made for actual quantities used but the pay item was "per station," the contractor was entitled to payment in actual quantities placed at the unit price per cubic yard established in a unilateral change order issued to recompense the contractor for amounts placed in excess of those shown in the bid package.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978)
85 I.D. 107

General Rules of Construction

A Federal contract is governed by Federal contract law, rather than the law of the state in which the contract is executed.

Article 2 of the Uniform Commerical Code is applicable to transactions in goods, not to construction contracts.

Appeal of The Minnesota Chippewa Tribe, IBCA-1025-3-74 (May 19, 1975)
82 I.D. 238

Government mineral leases are subject to the same rules of construction as those applied in interpreting a contract between two private parties.

While a general rule of contract construction provides that when two provisions of a lease conflict, and one is a printed form while the other is a typed or written addendum, the latter provision will be given force and effect over the former, this rule is only relevant where the two provisions cannot be reconciled.

The addition to a standard lease clause, reserving to the Secretary the right to establish reasonable minimum values for minerals mined, of an insertion which spells out how the gross value is to be set does not deprive the Secretary of the reserved right where the application of the added provisions would deprive the United States of any payment for a recoverable associated mineral.

St. Joe Minerals Corp., 20 IBLA 272 (May 19, 1975)

Government permits are subject to the same rules of construction as those applied in interpreting a contract between private parties, although contracts and permits have different legal import.

Where the Government has the absolute right under the terms of a permit to cancel such permit, notice to cancel the permits, properly given, cannot be considered arbitrary or capricious if made in the regular course of conducting Government business in the public interest.

L. C. Power et al., 22 IBLA 15 (Sept. 5, 1975)

In a case involving the question of the importance to be ascribed to the typical cross section shown on the contract drawings, the Board finds that the drawings contained positive representations on which the contractor was entitled to rely and did rely in submitting its bid, noting, in connection therewith, that the interpretation advanced by the Government with respect to certain provisions on the drawings, in the contract and in a change order would render inoperative or superfluous other requirements clearly imposed by the drawings or contract terms. Previously the Board had found that the contractor's site visit was adequate and in any event could not have revealed conditions created by storms which took place several months after the scheduled site visit concluded.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73
(Sept. 29, 1975) 82 I.D. 459

An appeal before the Board on remand from the Court of Claims with instructions to admit evidence, previously excluded under the parol evidence rule, for the purpose of showing a pre-award agreement or an express or implied concession as to the rate of use of helicopter services, is denied where the record, augmented as the Court directed, shows that the Government did not change its method of contracting at appellant's request but rejected the proposal to include a guaranteed minimum daily rate of use and where an internal memorandum from appellant's president shows that he understood at the time of award that the contract could be flown at the rate of 5 hours per day rather than the rate of 7 hours per day alleged later when the contract proved unprofitable.

Appeal of Inter*Helo, Inc., IBCA-713-5-68 (Ct. Cl. No. 54-70) (Dec. 1, 1975) 82 I.D. 591

Cross motions for summary judgment are denied where the Board finds the stipulated record furnishes an insufficient basis for an informed judgment and that a hearing will be required for determining the merits of the entitlement question presented for decision.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA-1072-7-75 (Apr. 7, 1976) 83 I.D. 148

The rules of construction applicable to Government contracts are the same rules applied to contracts between private parties.

Tomco, Inc., 29 IBLA 298 (Mar. 30, 1977)

When the contractor's interpretation of the contractual clauses is reasonable the Government cannot impose its own interpretation, since the Government, as the drafter, could have been explicit in conveying its intent but failed to do so.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (July 15, 1977) 84 I.D. 407

An allegation by the contractor that it was "required" to accept an amount smaller than its invoice for a change in order to avoid assessment of liquidated damages was not sustained where the contractor failed to prove (1) that it involuntarily accepted the Government's terms, (2) that the circumstances permitted no alternative and (3) that the circumstances were the result of coercive acts of the Government.

Where the contract required hand planing of the top surface of the flooring to remove machine marks and the contractor hand planed only those areas where machine marks were present, the Government was not entitled to require hand planing of areas where machine marks were not present since, as drafter of the specification, the Government could have required hand planing of the entire surface but did not.

Appeal of Great Eastern Enterprises Corp., IBCA-1113-7-76 (July 15, 1977)

Where the contract required separated excavation and stockpiling of topsoil and the restoration of rights-of-way as near as practicable to pre-existing conditions, claims for complying with the Government's directions to strip 12 feet in width on one side of the trench to store unsuitable material other than topsoil and to handpick rocks from the covered trench are sustained because the directed work was beyond what was necessary to satisfy the contract requirements and constituted a constructive change.

Appeals of JEGC Co., IBCA-1020-2-74 and IBCA-1033-4-74 (Sept. 28, 1977) 84 I.D. 455

Where the contract required the construction of a fence on the boundary of a national monument and the appellant disregarded IFB instructions to visit the monument headquarters for information pertinent to bidding and disregarded other specific requirements of the specifications regarding the permissible methods of transporting materials to the work site, claims for increased costs of performance are denied because the costs resulted from appellant's failure to make an adequate pre-bid site investigation and to plan to perform in accordance with the specification requirements.

Appeal of Arizona Fence Co., Inc., IBCA-1144-3-77 (Feb. 9, 1978)

Where a contract does not specify the exact method to be used by the contractor in performing manhole renovations, the contractor may proceed according to the industry standard. The Board finds that sandblasting was an acceptable and adequate method to renovate manholes and that the Government's requirement to use a more costly method was unwarranted.

Appeal of Paul R. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

A dispute as to pay quantities under a construction contract is resolved in favor of the contractor where his interpretation of the specification paragraph in issue gives effect to all the language of the particular provision and is consistent with the construction placed upon the specifications and drawings by the Government employees responsible for their preparation. A Government's counterclaim involving a portion of the disputed pay quantities is denied.

B&J Construction Co., Inc., IBCA-1142-2-77 (Dec. 28, 1978) 85 I.D. 468

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction--Continued

When the contractor offers materials which the contracting officer discovers are not in total compliance with the specifications, the contracting officer may accept the material if he finds it to be in the best interests of the Government. That acceptance, however, is not final and conclusive if based on, or induced by, a misrepresentation of a material fact.

Appeal of Nasatka & Sons, Inc., IBCA-1157-6-77 (Sept. 28, 1979) 86 I.D. 513

Government-furnished Property

Where a request for proposals for the construction of a pipeline provided that certain pipe and fittings for the pipeline would be furnished by the Government and appellant's proposal, reasonably interpreted, excepted to material the request for proposals provided was to be furnished by the contractor, the Board sustains the contractor's claim for material it furnished, holding that the Bureau, in failing to seek confirmation of its interpretation of appellant's proposal, accepted the risk of the accuracy of its interpretation.

Appeal of Wm. V. Bontin d/b/a Bontin Construction Co., IBCA-1051-12-74 (May 29, 1975)

A cost-plus-fixed-fee contractor's claim for costs in excess of the estimated cost of the contract, incurred in correcting deficiencies in Government-furnished property, was denied where the contractor knew or should have known that costs being incurred would exceed the estimated cost, but failed to give the notice required by the Limitation of Cost clause and the evidence failed to furnish any basis for excusing the contractor's failure to give the required notice. The contractor's claim for additional fee on the extra work was sustained since the Limitation of Cost clause is not applicable to such claim.

Appeal of Booz, Allen & Hamilton, Inc., IBCA-1027-3-74 (Mar. 24, 1976) 83 I.D. 95

Intent of Parties

Usage and custom in the trade may be proved to aid in interpretation of the contract between parties, and can add words the parties have not expressed. However, the purpose of such proof is to give effect to the intention of the parties.

Tosco, Inc., 29 IBLA 298 (Mar. 30, 1977)

In the construction or interpretation of contracts, the primary purpose and guideline is the intention of the parties. A contract must be construed as a whole and the intention of the parties is to be collected from the entire instrument. Individual words and phrases must be considered in connection with the rest of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and grants appellant a rental-free revocable permit to enter the "service location," for any purpose under the contract including use of the sites for installation, operation, and maintenance of the facilities, the contract can be interpreted as granting appellant a rental-free revocable permit for a right-of-way for a gas pipeline.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Labor Laws

When a contractor failed to furnish the number of laborers required under a service contract and failed to cure such deficiency after a notice to show cause why the contract should not be terminated for default, the Board held that termination for default was proper and further held that the Government should continue to withhold earnings under the contract to satisfy first the wage claims by unpaid employees of the contractor as determined by the Department of Labor pursuant to the Service Contract Act of 1965 and secondly to satisfy any claim for excess costs by the contracting agency.

Appeal of Andy's Excavating, IBCA-1236-12-78 (Sept. 19, 1979) 86 I.D. 469

Modification of Contracts

Generally

Where the practice of a construction contractor was to separate claims for an equitable adjustment for increased costs due to a change from its claims for delays to the work caused by the change and the evidence established that the contractor's delay claim resulting from a change was pending before the contracting officer at the time the contractor agreed to and executed a modification settling the equitable adjustment for direct costs attributable to the change, the Government's contention that the delay claim was barred by accord and satisfaction was rejected since it is well settled that an agreement does not operate as an accord as to matters not contemplated by the agreement.

Where the contractor's offer to perform certain changed work for a lump sum was accepted and the agreement and the price was incorporated into a modification which the contractor executed without reservation or exception and the lump sum was subsequently paid, the contractor's subsequent claim for delays to the work attributable to the change was barred by accord and satisfaction.

Appeal of Hensel Phelps Construction Co., IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

A contractor's acceptance of a change order is found to be no bar to consideration of a claim under the Changes clause where the evidence shows that the claim involved had neither arisen nor been discussed prior to the time the change order in question was executed.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Notices

Under a construction contract for a beach nourishment project at Cape Hatteras involving a contractor's claim for equitable adjustment based upon the Government directing the beach fill to be placed in a manner differing from the typical cross section shown on the contract drawing, the Board finds that the 30-day notice provision of the Changes clause should not preclude consideration of the claim on the merits where there is no one action of the Government which can be pointed to as the identifiable event upon which the claim is grounded and from which the contractor's delay in presenting the claim can be measured, particularly where the evidence of record indicates that the Government's actions contributed to and may even have

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Notices--Continued

been the principal cause of the delay in giving notice of the claim.

A claim under the Suspension of Work clause is denied where the Board finds (i) that the contracting officer acted within his discretion in issuing an order directing the suspension of all work in the wake of a devastating storm at Cape Hatteras with a view to determining whether and, if so, how the work under a beach nourishment contract should proceed or, alternatively, whether the contract should be terminated for the convenience of the Government; (ii) that the contractor had failed to show that its costs would have been any less if the stop work order had been issued at an earlier time; (iii) that suspending the contract work for the 5 working days covered by the stop order did not involve delaying the work for an unreasonable period of time; and (iv) that showing the contract work to have been suspended or delayed for an unreasonable period of time is a prerequisite to recovery under the Suspension of Work clause in all cases including those in which a written order to suspend work has been given as contemplated by paragraph (a) of the clause.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73
(Sept. 29, 1975) 82 I.D. 459

When appellant can show that failure to give timely written notice was not prejudicial to Government's interest, appellant is not estopped from prosecuting an appeal.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 29, 1977) 84 I.D. 119

Where a transformer failed shortly after being placed in service and the contractor acted promptly after notice to return the transformer to the factory for repairs at no cost to the Government, the Board held that the Government could not invoke provisions of the inspection clause of the contract relating solely to correction of defects at the point of installation to charge the contractor with the costs of removing and reinstalling the transformer.

Appeal of Traver Engineering Corp., IBCA-1100-3-76
(Mar. 31, 1977) 84 I.D. 166

The 20-day notice provision of the changes clause is found inapplicable when the Board finds numerous survey errors were the principal cause of most of the costs claimed and that such errors came within the defective specification exception to the notice requirement of the changes clause.

Appeal of H. B. Byars Construction Co., and Nevada Paving, Inc. (Joint Venture), IBCA-1098-2-76 (June 7, 1977) 84 I.D. 260

The Government's motion to dismiss an appeal because of the failure of the contractor to give the 20-day written notice required by the Changes clause is denied, where the Board finds that there was timely notice with respect to some of the costs on which the claim is based and that the hearing to be held may show that some or all of the remaining costs fall within other recognized exceptions to the strict application of the 20-day cost-limitation provision.

Appeal of Hartford Accident and Indemnity Co., IBCA-1139-1-77 (June 23, 1977) 84 I.D. 296

Under a cost-plus-fixed-fee contract, a cost overrun is allowed where the Government's refusal to fund the overrun was based on appellant's failure to give timely notice under the Limitation of Cost clause and a subsequent audit report finds that the appellant was not aware of a 22 percent increase in the actual overhead rate until a post-performance audit was completed in accordance with the appellant's approved accounting practices.

Appeal of California Earth Sciences Corp., IBCA-1136-12-76 (Mar. 3, 1978) 85 I.D. 75

Where the Government's engineer recorded in his daily diary a verbal protest made by the contractor about embankment compaction difficulties and the inaccuracy of the proctor information furnished by the Government, this satisfied the 20-day notice requirement of the changes clause with respect to some of the claims. It was unnecessary to finally decide the scope of such notice, however, where the Board found the claims to be without merit in any event.

Burr Construction Co., IBCA-1042-9-74 (Aug. 30, 1978)
85 I.D. 353

Payments

Failure to pay subcontractors, suppliers and employees on time and thereby causing delays does not constitute an excusable cause of delay justifying an extension of time.

Appeal of Scope, Inc., IBCA-1090-1-76 (May 6, 1977)

When contractor fails to prove sufficient work was performed in an acceptable manner to entitle it to progress payments, failure to make such payments by the Government does not constitute a constructive change.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Payments--Continued

Where imponderables make it difficult to arrive at an accurate measurement of the amount of concrete placed under water, the Board finds that the amount represented by "paid for" concrete minus the amount of concrete admittedly wasted is the preferred method for determining the amount to which the contractor is entitled for the concrete so placed.

Appeal of William P. Bergan, Inc., IBCA-1130-11-76 (Feb. 2, 1979) 86 I.D. 65

Privity of Contract

An appeal taken by a subcontractor in its own name is dismissed where the Board finds the subcontractor has no standing to invoke the provisions of the Disputes Clause as a means of securing an adjudication by the Board of the rights and obligations of the contesting parties.

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 29, 1977) 84 I.D. 119

An insurance company is refused permission to participate directly in prosecution of an appeal proceeding with a view to recovering the amount paid to the contractor under a builder's risk insurance policy as part of the contractor's differing site conditions claim, where the grounds assigned for the participation are that the interests of the contractor and the insurance company may well prove to be adverse and that the insurance company has the right to participate directly by reason of its status as a partial subrogee, the Board finding (i) that the privity of contract rule rather than the real party in interest rule is controlling in appeal proceedings and (ii) that it has no authority under the Disputes clause to adjudicate the rights of the contractor and the insurance company should they prove to be adverse, irrespective of whether such rights are asserted by the insurance company under a release and assignment of interest executed by the contractor or as a partial subrogee and without regard to the fact that the appellant had authorized the insurance company to file a separate complaint and to prosecute its claim through its own attorneys in the appellant's name.

Appeal of Zurn Engineers, IBCA-1176-12-77 (July 20, 1978) 85 I.D. 279

The prime contractor may appeal in its own name a claim asserted by its subcontractor. The subcontractor's rights to an equitable adjustment under the contract are no greater, however, than those of the prime contractor in whose name the appeal is taken.

Appeal of Brown & Root Western, Inc., IBCA-1220-10-78 (Apr. 13, 1979)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Protests

Where a construction contractor contended that the contracting officer's enforcement of a contract requirement for roll-over protective structures on all equipment regardless of age constituted a change because the requirement was contrary to standards issued by the Secretary of Labor under the Occupational Health and Safety Act (29 U.S.C. § 651 et seq. (1970)) and therefore void, the Board examined the contention in the light of OSHA and also under the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 et seq. (1970)) and concluded that, while it was unlikely that either statute was intended to preclude a Federal agency from contractually imposing more stringent safety requirements than prescribed by the Secretary of Labor, it was not necessary to decide the question since appellant's remedy for an alleged illegal clause was a protest in other forums prior to bidding and award.

Appeal of Paul E. McCollum, Sr., IBCA-1080-10-75 (Feb. 24, 1976) 83 I.D. 43

Subcontractors and Suppliers

Appellant cannot justify a request for a time extension by alleging its subcontractor breached its subcontract with appellant. Nor can appellant justify a request for a time extension due to unavailability of certain supplies when there is a failure to establish the supplies were timely ordered.

Appeal of David M. Cox, Inc., IBCA-1079-10-75 (Apr. 7, 1976)

A first category differing site conditions claim based on the encountering of subsurface waterlines not shown on the contract drawings in the vicinity of a fish hatchery building is denied, where the Board finds that except for the unsupported allegations of the contractor there is nothing in the record to indicate that the experienced subcontractor who performed required excavation in the area where the buried waterlines were located failed to anticipate the conditions he actually encountered.

Appeal of William Lagnion (Contractor), IBCA-1083-10-75 (Jan. 5, 1977)

An appeal taken by a subcontractor in its own name is dismissed where the Board finds the subcontractor has no standing to invoke the provisions of the Disputes Clause as a means of securing an adjudication by the Board of the rights and obligations of the contesting parties.

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 29, 1977) 84 I.D. 119

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Subcontractors and Suppliers--Continued

Failure to pay subcontractors, suppliers and employees on time and thereby causing delays does not constitute an excusable cause of delay justifying an extension of time.

Appeal of Scona, Inc., IBCA-1096-1-76 (May 6, 1977)

Third Persons

An insurance company is refused permission to participate directly in prosecution of an appeal proceeding with a view to recovering the amount paid to the contractor under a builder's risk insurance policy as part of the contractor's differing site conditions claim, where the grounds assigned for the participation are that the interests of the contractor and the insurance company may well prove to be adverse and that the insurance company has the right to participate directly by reason of its status as a partial subrogee, the Board finding (i) that the privity of contract rule rather than the real party in interest rule is controlling in appeal proceedings and (ii) that it has no authority under the Disputes clause to adjudicate the rights of the contractor and the insurance company should they prove to be adverse, irrespective of whether such rights are asserted by the insurance company under a release and assignment of interest executed by the contractor or as a partial subrogee and without regard to the fact that the appellant had authorized the insurance company to file a separate complaint and to prosecute its claim through its own attorneys in the appellant's name.

Appeal of Zurn Engineers, IBCA-1176-12-77 (July 20, 1978) 85 I.D. 279

Waiver and Estoppel

When appellant can show that failure to give timely written notice was not prejudicial to Government's interest, appellant is not estopped from prosecuting an appeal.

Appeal of Halvorson-Lentz (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

The United States is not bound or estopped by the acts of its agents who may enter into a contract or an agreement to do or cause to be done what the law does not sanction or permit.

The burden is on the individual or entity contracting with the Government to ascertain whether the Government agent with whom he is dealing is acting within the scope of his authority.

Estoppel has been imposed against the Government by the Ninth Circuit Court of Appeals only if it can be shown that there was "affirmative misconduct" by the Government.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Waiver and Estoppel--Continued

When the Government could not require delivery of a refrigerated storage unit within the original delivery schedule because the building in which the unit was to be installed was not finished and the Government thereafter continued to negotiate changes in specifications and delivery dates with the contractor, the Board held that the Government had waived the original delivery schedule and that the Government did not regain the right to terminate the contract for default since there was no mutual agreement on a new delivery date and the Government's unilateral attempt to reestablish a specific contractual delivery date was unreasonable as not being within the performance capabilities of the contractor at the time the notice was given.

Appeal of Kenney Refrigeration, IBCA-1230-12-78 (Sept. 28, 1979) 86 I.D. 503

CONTRACT DISPUTES ACT OF 1978

Interest

Where a contractor's claim is not pending before the contracting officer on the effective date, Mar. 1, 1979, of the Contract Disputes Act of 1978, the contractor is ineligible, under sec. 16 thereof, to elect to proceed under the Act. Therefore, an appeal to the Board, involving a claim upon which the final decision of the contracting officer was issued prior to Mar. 1, 1979, and seeking relief pursuant to sec. 12 of the Act, will be dismissed for lack of jurisdiction.

Appeal of L. E. Johnson, Inc., IBCA-1268-5-79 (Sept. 28, 1979) 86 I.D. 508

Jurisdiction

Where a contractor's claim is not pending before the contracting officer on the effective date, Mar. 1, 1979, of the Contract Disputes Act of 1978, the contractor is ineligible, under sec. 16 thereof, to elect to proceed under the Act. Therefore, an appeal to the Board, involving a claim upon which the final decision of the contracting officer was issued prior to Mar. 1, 1979, and seeking relief pursuant to sec. 12 of the Act, will be dismissed for lack of jurisdiction.

Appeal of L. E. Johnson, Inc., IBCA-1268-5-79 (Sept. 28, 1979) 86 I.D. 508

A contractor may not proceed under the provisions of the Contract Disputes Act of 1978 where the appeal is from a final decision of the contracting officer rendered and received by the appellant prior to the effective date of the Act.

Appeals of Gregory Lumber Co., Inc., IBCA-1237-12-78, 1238-12-78, 1239-12-78, 1240-12-78 (Sept. 28, 1979) 86 I.D. 520

DISPUTES AND REMEDIES

Generally

Where a construction contractor contended that the contracting officer's enforcement of a contract requirement for roll-over protective structures on all equipment regardless of age constituted a change because the requirement was contrary to standards issued by the Secretary of Labor under the Occupational Health and Safety Act (29 U.S.C. § 651 *et seq.* (1970)) and therefore void, the Board examined the contention

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Generally--Continued

in the light of OSHA and also under the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 *et seq.* (1970)) and concluded that, while it was unlikely that either statute was intended to preclude a Federal agency from contractually imposing more stringent safety requirements than prescribed by the Secretary of Labor, it was not necessary to decide the question since appellant's remedy for an alleged illegal clause was a protest in other forums prior to bidding and award.

Appeal of Paul F. McCollum, Sr., IBCA-1080-10-75 (Feb. 24, 1976) 83 I.D. 43

Appeals

Where a contractor has filed an appeal and has failed to file a complaint when often requested to do so over a 2-year period, the appeal is dismissed for want of prosecution.

Appeal of Evergreen Engineering, Inc., IBCA-998-5-73 (Sept. 2, 1975) 82 I.D. 427

Notice of appeal of all issues in a contracting officer's decision puts all the issues contained therein "at issue" before the IBCA until the parties state the issues then in dispute in the Complaint and Answer.

The findings and determinations of the contracting officer which have been appealed become some evidence to be considered and weighed by the Board together with all the other evidence in the record when the appeal is decided by the Board.

Appeal of Scona, Inc., IBCA-1090-1-76 (Dec. 20, 1977) 84 I.D. 1019

One element of an appeal was denied as the sanction for the appellant's failure to answer certain interrogatories relating to that element.

Appeal of Evergreen Engineering, Inc., IBCA-998-5-73 (May 17, 1978) 85 I.D. 107

Burden of Proof

Where a contract for the construction of a bridge substructure contained a provision requiring that employees erecting bridges and structures be protected by safety nets where the use of safety belts and lifelines or other conventional type of protection was impractical and the evidence failed to demonstrate that the use of safety belts and lifelines or other conventional type of protection was practical for workers on concrete piers, the Board denies the contractor's claim for a change based on the fact that it was required to use safety nets to protect workmen from possible falls.

Appeal of Hensel Phelps Construction Co., IBCA-1010-11-73 (May 6, 1975) 82 I.D. 199

The Board denies a construction contractor's claim for additional pay quantities where the evidence did not establish a basis for application of the rule of *contra proferentem*, the contractor's interpretation of the specifications was not shown to be reasonable and the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

record did not establish error in the Bureau's computation of pay quantities.

Appeal of Wm. T. Bostic d/b/a Bostic Construction Co., IBCA-1053-12-74 (May 29, 1975)

A construction contractor's claim for an equitable adjustment based on alleged defective specifications and for corrective work ordered by the Government as a condition to final acceptance of the project was denied, where the specification errors relied upon were obvious, there was no evidence that the contractor had been thereby misled to its detriment and the record did not establish that the corrective work ordered and performed was beyond the requirements of the contract. A claim for costs incurred in replacing door locks was allowed where the evidence established that locks ordered installed by the contracting officer were not a requirement of the contract.

Appeal of J. D. Pierce, IBCA-1035-6-74 (July 18, 1975)

The Government failed to sustain its burden of proving entitlement to a reduction of the contract price as an equitable adjustment for quantities of asphalt concrete for road repair in excess of the Government estimate. The evidence showed that neither party relied on the estimate, that the Government left the selection and manner of using equipment to the contractor and that the Government issued a change order when it observed the contractor's more efficient operation. The work described in the change order was the same work described in the contract and the reduction in unit cost of performance was not the result of the change order but was the result of the contractor's efficiency.

Appeal of Coistona Construction Co., Inc., IBCA-1028-8-74 (July 29, 1975) 82 I.D. 383

A claim under the Suspension of Work clause is denied where the Board finds (i) that the contracting officer acted within his discretion in issuing an order directing the suspension of all work in the wake of a devastating storm at Cape Hatteras with a view to determining whether and, if so, how the work under a beach nourishment contract should proceed or, alternatively, whether the contract should be terminated for the convenience of the Government; (ii) that the contractor had failed to show that its costs would have been any less if the stop work order had been issued at an earlier time; (iii) that suspending the contract work for the 5 working days covered by the stop order did not involve delaying the work for an unreasonable period of time; and (iv) that showing the contract work to have been suspended or delayed for an unreasonable period of time is a prerequisite to recovery under the Suspension of Work clause in all cases including those in which a written order to suspend work has been given as contemplated by paragraph (a) of the clause.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

To be able to support a claim for excess reprocurement costs, the Government must establish that work under a reprocurement contract has been performed and that payment has been made.

Appeal of [illegible] Cleaning Service, IBCA-1073-1-75 (Oct. 2, 1975)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

A claim for acceleration under a contract for the construction of footings for a transmission line is denied where one of appellant's principal contentions was that in a telephone conversation following record snow in late September the project engineer had directed that men and equipment be added to the job in order to finish the work by the contract completion date of Nov. 1, but in correspondence conducted with the Government for almost 6 months after such telephone conversation the contractor failed to refer to the directions purportedly received from the project engineer and even failed to reference the particular telephone conversation. Actions taken by the Government's principal inspector were also found not to constitute acceleration orders when the evidence clearly showed that both parties viewed the inspector's action as involving suggestions rather than directions and that whether the suggestions were accepted by the contractor's job superintendent depended upon the exercise of his business judgment.

Appeal of Iversen Construction Co. (d/b/a Iconco), IBCA-981-1-73 (Dec. 30, 1975) 82 I.D. 646

A claim for a longer time extension under a construction contract due to unusually severe weather is denied where the contracting officer obtained the local climatological data and after reviewing the data granted a time extension when appellant failed to dispute the data or offer any evidence to support its claim for a longer period.

Appeal of David H. Cox, Inc., IBCA-1079-10-75 (Apr. 7, 1976)

Where in moving for reconsideration of a decision denying its claim for constructive acceleration, the contractor contended that the Bureau's failure to promptly investigate its claim of delay due to unusually severe weather amounted to a denial of a request for a time extension and that the denial plus other actions of Bureau inspectors constituted an order to complete the work by the specified completion date irrespective of excusable delay and thus was an acceleration order, the Board ruled that a denial of a request for a time extension was insufficient in and of itself to constitute constructive acceleration and reviewing the evidence, affirmed the denial of the claim, holding that the actions of the inspectors were regarded as suggestions by the contractor and accepted or rejected depending on whether the suggestions were practical or economical.

Appeal of Iversen Construction Co. (d/b/a ICONCO), IBCA-981-1-73 (Apr. 19, 1976) 83 I.D. 179

Under a contract requiring the use of grout the Board denies a contractor's claim where it finds the terms of the specifications dispositive of the question presented.

Appeal of Whalen & Co., IBCA-1066-3-75 (May 26, 1976)

When the contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default and assessing excess reprocurement costs and liquidated damages.

Appeal of Timothy Mason, IBCA-1076-9-75 (July 29, 1976) 83 I.D. 297

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

Where the Government failed to explain the presence of water which entered a 230 KV reactor while the reactor was under Government control and protected by Government security measures and where the water caused more extensive repairs to the reactor than would otherwise have been necessary, the Board found no basis for determining the portion of the delay for which each party was responsible and held that liquidated damages could not be charged for any of the delay.

Appeal of Addison Construction Co., IBCA-1064-3-75 (Sept. 29, 1976) 83 I.D. 353

A claim for extra work is denied where the appellant does not even undertake to show why the work was considered to be beyond the requirements of the contract.

Appeals of Willie H. Patterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Feb. 28, 1977)

In prosecuting an appeal the burden of proof is upon appellant to establish by credible evidence that it is entitled to an equitable adjustment.

Appeal of Balycrace-Lents (A Joint Venture), IBCA-1055-2-75 (Mar. 3, 1977)

Under a contract requiring contractor to provide all necessary material, equipment and labor, the contractor's admission that it did not have adequate equipment or an efficient work force, as well as a lack of experience in the work required to be performed does not meet the burden of proof to justify an extension of time.

Appeal of Secoa, Inc., IBCA-1094-1-76 (May 6, 1977)

The Government has the burden of proof that the contractor failed to deliver the goods. The contractor has the burden of proof that its failure was excusable. Where the only evidence of excusability was a letter from the contractor saying that it was delayed by delays in procurement of components and unexpectedly slower rates of system checkout and software debugging, the contractor has not carried its burden of proof of excusability and the appeal is denied.

Appeal of CSP, Inc., IBCA-1137-12-76 (Nov. 10, 1977) 84 I.D. 517

When the contract requires the pipe to be laid in a trench 18 inches in depth measured from the center line of the pipe to the top of the ground line or on top of the ground with 18 inches of cover if rock strata is encountered, the contractor cannot sustain an allegation of a constructive change when the Government insists the requirements be followed and objects to contractor laying the pipe in a trench less than 18 inches in depth.

Appeal of Underground Utility Services, IBCA-1067-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

When the Government says that a claim is barred by a supplemental agreement it has the burden of proof as to the terms and conditions of that agreement.

Appeal of Sierra Construction Co., IBCA-1145-3-77 (June 7, 1978) 85 I.D. 192

Where the contract specifies a particular test procedure to be used by the Government for compliance testing, and the contractor alleges improper test procedures by the Government, contractor has the burden of proving that the test procedures actually used by the Government were contrary to those specified, and that it incurred extra costs as a result thereof. Contractor failed to sustain its burden of proof, except with respect to the superspan claim.

Contractor's claims for extra costs allegedly incurred as a result of constructive changes under the earthwork requirements of the contract were denied because the contractor failed to sustain its burden of proof on the merits.

Burn Construction Co., IBCA-1062-9-74 (Aug. 30, 1978) 85 I.D. 353

In claiming extra costs due to a Government-caused delay, the burden is on the contractor to show that a delay occurred, that the delay was caused by the Government, and that damages incurred as a result of the delay. Absent this proof, the Board found appellant's delay claim to be totally without merit.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of claim letters and pleadings alleging that the contracting officer's findings of fact and decision are erroneous in certain respects. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of C.I.C. Construction Co., Inc., IBCA-1190-4-78 (Sept. 25, 1979) 86 I.D. 475

Where a clearing contractor claims entitlement to an equitable adjustment based on the standard Differing Site Conditions clause of the contract, and the evidence shows that the principal causes of any increased costs which may have been incurred were heavy rains and failure of the contractor to make a reasonable prebid investigation of the site or examination of specifications, and no evidence of fault on the part of the Government is presented, the Board holds that the contractor has not sustained its burden of proof for entitlement to an equitable adjustment, and the appeal will be denied.

Appeal of M & E Equipment Co., IBCA-1088-11-75 (Sept. 28, 1979) 86 I.D. 527

Damages

Generally

An Oil and Gas Supervisor of the Geological Survey has authority to demand prejudgment interest based upon the failure of an oil and gas lessee to pay timely royalties owed to the Government, despite the fact that the Supervisor is an employee of the Executive Branch.

Atlantic Richfield Co., 21 IBLA 98 (June 30, 1975) 82 I.D. 316

In an instance where a party to a contract claims substantial but not complete performance of the contract to satisfy his obligation he must either complete the job according to specifications or pay the cost of completion.

Tomco, Inc., 29 IBLA 298 (Mar. 30, 1977)

Actual Damages

To be able to support a claim for excess reprocurement costs, the Government must establish that work under a reprocurement contract has been performed and that payment has been made.

Appeal of Hallweberg Cleaning Service, IBCA-1057-1-75 (Oct. 2, 1975)

Liquidated Damages

Where the action of the Government clearly contributed to the delay for which liquidated damages were assessed and there was no basis for determining the portion of the delay for which each party was responsible, the Board found that no liquidated damages could properly be charged.

Appeal of David M. Cox, Inc., IBCA-1095-12-75 (July 22, 1976)

Where the Government failed to explain the presence of water which entered a 230 KV reactor while the reactor was under Government control and protected by Government security measures and where the water caused more extensive repairs to the reactor than would otherwise have been necessary, the Board found no basis for determining the portion of the delay for which each party was responsible and held that liquidated damages could not be charged for any of the delay.

Appeal of Addison Construction Co., IBCA-1044-3-75 (Sept. 29, 1976) 83 I.D. 393

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages--Continued

Liquidated Damages--Continued

When the Government did not offer any evidence to explain its failure for almost a month to arrange for the relocation of a powerline which was within the right-of-way for construction and the other evidence of record furnished an insufficient basis for determining the portion of the delay for which each party was responsible, liquidated damages could not properly be assessed for delayed performance.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

When the Government assesses liquidated damages for late performance of a contract and the contractor asserts that the delay was excusable because of unusually severe weather, the contractor must show not only that the weather was bad (and delayed the work), but that the weather was worse than normal for that time and place.

Appeal of Sierra Construction Co., IBCA-1145-3-77 (June 7, 1978) 85 I.D. 192

Where the evidence shows no meeting of the minds between a completing surety and the Government on the matter of the surety's liability for liquidated damages, the Government does not waive the right to assess liquidated damages under a novation theory merely by allowing the surety, otherwise liable for liquidated damages under the contract, to complete performance of the contract terminated for default.

Appeal of General Construction Corp. of America by Financial Indemnity Co. (Its Surety), IBCA-1178-2-78 (Mar. 29, 1979) 86 I.D. 206

Measurement

Even where statute, regulation, and the oil and gas lease itself do not specifically provide for the payment of prejudgment interest on royalties owed to the United States, such interest may be imposed by the United States; equity principles may authorize such imposition. A charge for such interest may be imposed despite delays in processing the debtor's appeals, where the debtor assertedly relied upon an earlier Departmental decision which, only when taken out of context, would tend to support the debtor's posture.

Atlantic Richfield Co., 21 IBLA 98 (June 30, 1975) 82 I.D. 316

Where the prime contractor claims damages against the Government stemming from differing site conditions encountered by its subcontractor, and the prime contractor and subcontractor have settled these same claims in an independent proceeding, the Government's liability to the prime contractor is limited to the amount of the settlement.

Where a finding is made by the Board on the extent of the Government's liability to the contractor, any moneys previously allowed and paid pursuant to a contracting officer's decision on the same claims shall be deducted from the gross amount allowed in order to determine the net amount payable to the contractor.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages--Continued

Measurement--Continued

Where imponderables make it difficult to arrive at an accurate measurement of the amount of concrete placed under water, the Board finds that the amount represented by "paid for" concrete minus the amount of concrete admittedly wasted is the preferred method for determining the amount to which the contractor is entitled for the concrete so placed.

Appeal of William E. Bozman, Inc., IBCA-1130-11-76 (Feb. 2, 1979) 86 I.D. 65

Equitable Adjustments

In a case where the Government (i) rejected certain conditions attached to the contractor's offer to perform at the contract unit price additional excavation due to a directed change, (ii) determined that the contractor was entitled to an extension of 82 days as the time required to perform the additional excavation which was accepted by the contractor, (iii) recognized that the contractor might be entitled to an additional extension due to certain operations being extended into the inclement winter weather, and (iv) subsequently granted the contractor a 20-day time extension due to unusually severe weather, the Board finds the contractor to be entitled to an equitable adjustment for increased costs of working in winter weather which were the direct and inevitable consequence of the directed change, rejecting Government contentions that the contractor's claim was barred by accord and satisfaction or that it represented costs for working in inclement weather for which the contract made no provision.

Appeal of Hensel Phelps Construction Co., IBCA-1010-11-73 (May 6, 1975) 82 I.D. 199

A road-building contractor was entitled to an equitable adjustment under the Suspension of Work clause for idle equipment expense where the Government stopped the contractor from hauling gravel base as a result of failing density tests on a nuclear-electronic gauge not authorized by the contract for testing compaction and where, after the contractor protested the use of such gauge and requested tests in accordance with the contract, the Government further delayed conducting the sand-cone tests required by the contract, causing contractor's gravel hauling equipment to be idle for 2 days and further causing the paving operations to be delayed by 2 days.

Appeal of Thorson, Inc., IBCA-993-4-73 (June 30, 1975)

The Government failed to sustain its burden of proving entitlement to a reduction of the contract price as an equitable adjustment for quantities of asphalt concrete for road repair in excess of the Government estimate. The evidence showed that neither party relied on the estimate, that the Government left the selection and manner of using equipment to the contractor and that the Government issued a change order when it observed the contractor's more efficient operation. The work described in the change order was the same work described in the contract and the reduction in unit cost of performance was not the result of the change order but was the result of the contractor's efficiency.

Appeal of Quintana Construction Co., Inc., IBCA-1028-4-74 (July 28, 1975) 82 I.D. 363

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

Under a construction contract for a beach nourishment project at Cape Hatteras involving a contractor's claim for equitable adjustment based upon the Government directing the beach fill to be placed in a manner differing from the typical cross section shown on the contract drawing, the Board finds that the 20-day notice provision of the Changes clause should not preclude consideration of the claim on the merits where there is no one action of the Government which can be pointed to as the identifiable event upon which the claim is grounded and from which the contractor's delay in presenting the claim can be measured, particularly where the evidence of record indicates that the Government's actions contributed to and may even have been the principal cause of the delay in giving notice of the claim.

A contractor's acceptance of a change order is found to be no bar to consideration of a claim under the Changes clause where the evidence shows that the claim involved had neither arisen nor been discussed prior to the time the change order in question was executed.

A special provision authorizing the contracting officer to adjust or revise the limits of the work during performance to reflect the conditions encountered and thereby provide for maximum use of material available with the funds allotted is found to vest the contracting officer with no plenary authority to direct the placement of the beach fill where the authorization to adjust or revise the limits of the work is circumscribed by the use of the word "approximate."

An estimated quantities provision under which the Government was authorized to obtain additional quantities of beach fill at the unit price specified in the contract so long as the additional quantities did not exceed 25 percent of the original total contract price is found not to preclude an adjustment under the Changes clause for clearly unforeseeable costs to the extent the contractor shows (i) the basis upon which its bid was calculated and (ii) the causal connection between the increased costs and the inability or the failure of the Government to adhere to the typical cross section shown on the contract drawings in directing the placement of the fill.

Appeal of J. A. LaPorte, Inc., IBCA-1016-12-73 (Sept. 29, 1975) 82 I.D. 459

A second category differing site conditions claim based upon rock encountered in excavation under a construction contract is denied where the Board finds that an adequate site investigation would have revealed the presence of rock in the area where it was encountered.

A first category differing site conditions claim based on the encountering of subsurface waterlines not shown on the contract drawings in the vicinity of a fish hatchery building is denied, where the Board finds that except for the unsupported allegations of the contractor there is nothing in the record to indicate that the experienced subcontractor who performed required excavation in the area where the buried waterlines were located failed to anticipate the conditions he actually encountered.

Although a first category differing site conditions claim is established by the presence of a septic tank in an area where the plans indicate a sewage treatment plant was slated to go, a contractor's claim based thereon is denied where the evidence shows that the location of the sewage treatment plant was changed before any significant amount of work was done in the area where the septic tank was located.

Appeal of William Lasnick (Contractor), IBCA-1003-10-73 (Jan. 5, 1977)

An order to build a curved wall was a constructive change outside change order #1 which was for a straight wall. Thus, the claim for extra costs for curved construction and for stand-by time caused by the Government delay in staking wall is compensable.

Appeal of Rocky Mountain Construction Co., IBCA-1051-12-75 (Aug. 17, 1977) 84 I.D. 629

A first category differing site condition claim based upon excessive rock encountered in excavation under a construction contract is sustained where the Board finds there was an adequate pre-bid site investigation and that the contract indications of subsurface conditions did not reveal the excessive quantities of rock in the areas where it was encountered.

A first category differing site condition claim based upon mitigating subsurface water and rock excavation encountered is sustained where the Board found that the Government knew of the subsurface mitigating water but failed to disclose such information to bidders and that both the rock and the subsurface mitigating water encountered differed materially from the contract indications.

Appeals of JBKC Co., IBCA-1020-2-74 and IBCA-1033-4-74 (Sept. 30, 1977) 84 I.D. 459

Upon reconsideration, the Board finds that where the Government issues an "Extra Work Order" under a "force account" provision for minor extra work not provided for in other pay items, at agreed on rates, the contractor is entitled to be paid for inefficiency, rework costs and delay costs when moisture causes borrow material placed under the extra work order, to become muddy. However, the appellant's failure to give prompt notice of the claim under the force account provision caused the Government to order added pay item work, thus the claim must be reduced by the amount of added pay item payment.

Appeal of Rocky Mountain Construction Co., IBCA-1051-12-75 (Nov. 4, 1977) 84 I.D. 858

Where evidence established that faulty construction of original shoring and noncompliance with appropriate directives in reshoring process on the part of construction contractor's own employees caused failure of cantilever lintel and collapse of masonry wall, the Board denies claim of entitlement to an equitable adjustment by the contractor for additional costs incurred in reconstruction of masonry wall as well as claim for 30-day time extension, since the contractor failed to prove allegations of defective or inadequate Government drawings and specifications.

Appeal of CWB Contractors, Inc., IBCA-1107-4-76 (May 25, 1978) 85 I.D. 148

In a contract for placement of sand on a beach at Cape Hatteras where the contracting officer's formula for computing an equitable adjustment for changed work did not consider the increased pumping time and increased maintenance caused by the change and did not allow for profit on the increased costs, the Board found that the contractor was entitled to an equitable adjustment based on those factors.

Where a contractor accepted a contract containing a clause limiting an equitable adjustment for profit to 15 percent of the cost of changed work, he is bound by the limitation even though his contract price of $1.31

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

per cubic yard of sand exceeded his estimated contract costs of 75 cents per cubic yard by more than 15 percent.

Appeal of J. A. LaPorte, Inc., IBCA-1146-3-77 (July 6, 1978) 85 I.D. 262

Under a contract for surfacing a road over an existing subgrade which proves to require extensive rebuilding because of the failure of the contract to specify the actual conditions, the equitable adjustment to which the contractor is entitled is found to be the amount by which the actual costs and profit rate bid exceeds the final contract value, rather than the speculative costs attributed to interruptions and delays, because the contractor's performance period was not significantly extended.

Buck Brown Contracting Co., Inc., IBCA-1119-7-76 (Aug. 1, 1978)

Appellant is entitled to an equitable adjustment of the contract price for costs incurred as a result of the changes under the superspan specifications. Since the contractor was unable to establish the amount of its damages by reliable evidence, the total cost approach of pricing the contract adjustment was rejected. The total cost approach is disfavored as a measure of compensation because it assumes that the original bid was accurate, that the change was the sole cause of cost increases, and that the cost incurred was reasonable. The jury verdict approach was used since mathematical exactness is not necessary and there existed some evidence which was deemed sufficient for that purpose. The Board also found the contractor had been excusably delayed by actions attributable to the Government.

Duke Construction Co., IBCA-1062-9-74 (Aug. 30, 1978) 85 I.D. 353

Where the contractor alleged extra costs but failed to establish that all such costs were due to the defective specifications, and where a Government audit shows that a substantial portion of such costs were in fact incurred but could not attribute such costs to that portion of the project relating to the defective specification, the Board will determine the amount of the equitable adjustment by utilizing the jury verdict approach.

G.T.S. Co., Inc., IBCA-1077-9-75 (Sept. 15, 1978) 85 I.D. 373

Where a finding is made by the Board on the extent of the Government's liability to the contractor, any moneys previously allowed and paid pursuant to a contracting officer's decision on the same claims shall be deducted from the gross amount allowed in order to determine the net amount payable to the contractor.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

Where under a standard construction contract the liability of the Government for defective plans and specifications is clearly established but as a consequence of the contractor having failed to segregate the costs applicable to the constructive change it is not possible to determine precisely the extent to which the Government's actions increased the cost of performance, the amount of the equitable adjustment to which the contractor is entitled is determined by the Board finding whether particular costs are allocable where that is possible and drawing inferences from the entire record where it is not possible to otherwise determine the proper allowances to be made for various aspects of the claimed amount.

Claims for extra costs incurred in the concrete lining of a canal attributed to heat encountered during delayed performance allegedly caused by defective plans and specifications is denied, where the Board finds that the delays experienced were the result of actions or inactions for which the contractor was responsible including (i) the failure to have necessary equipment operational weeks after concrete placement was to commence according to the contractor's plan; (ii) the hiring of incompetent carpenters; and (iii) the manner in which the contractor chose to place outlet structures.

A&J Construction Co., Inc., IBCA-1142-2-77 (Dec. 28, 1978) 85 I.D. 468

Where imponderables make it difficult to arrive at an accurate measurement of the amount of concrete placed under water, the Board finds that the amount represented by "paid for" concrete minus the amount of concrete admittedly wasted is the preferred method for determining the amount to which the contractor is entitled for the concrete so placed.

Where the evidence clearly establishes that the Government specifications were defective in a number of respects but fails to show that many of the costs claimed are attributable to actions of the Government, the Board--noting that it is impossible to determine the amount to which the contractor is entitled with mathematical exactness--finds that the "jury verdict" method of determining the amount of the equitable adjustment is the most appropriate method in the circumstances presented by the instant appeal.

Appeal of William F. [illegible], Inc., IBCA-1130-11-76 (Feb. 2, 1979) 86 I.D. 67

When arguments advanced in a motion for reconsideration convince the Board that the formula used in determining an equitable adjustment was not the most accurate method but where neither party submits a better method, the Board will vacate its original finding regarding the equitable adjustment and make a recomputation based on the evidence of record.

Appeal of J. A. LaPorte, Inc., IBCA-1146-3-77 (Feb. 14, 1979) 86 I.D. 125

Where there is evidence that some of the additional expenses claimed were due to contractor's own negligence and inefficiency, such factors must be considered in determining the amount of the equitable adjustment.

Appeal of DBC Construction, Inc., IBCA-1207-9-78 (June 28, 1979)

Where the evidence supports entitlement of a contractor to an equitable adjustment resulting from a constructive change, but fails to establish that all the claimed extra costs were incurred as a direct result of the constructive change, the Board will employ the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

jury verdict approach in order to determine the appropriate amount to be awarded to the contractor.

Appeal of Environment Consultants, Inc., IBCA-1192-5-78 (June 29, 1979) 86 I.D. 349

Where the preponderance of the evidence shows that substantial increased costs were incurred by a highway construction contractor, primarily because Government inspection personnel either failed to calibrate or improperly calibrated the density testing machine used to determine compaction compliance, and it is determined that the contractor is entitled to an equitable adjustment, the Board will adopt the amount for quantum reached by the parties at a negotiated settlement, when dissatisfied with both the Government audit and the quantum computation of the contractor, but satisfied that the negotiations were made in good faith, at arm's length, and by individuals thoroughly familiar with the details of the contract and its performance.

Appeal of Nielsons, Inc., IBCA-1173-11-77 (Sept. 27, 1979) 86 I.D. 493

Where a clearing contractor claims entitlement to an equitable adjustment based on the standard Differing Site Conditions clause of the contract, and the evidence shows that the principal causes of any increased costs which may have been incurred were heavy rains and failure of the contractor to make a reasonable prebid investigation of the site or examination of specifications, and no evidence of fault on the part of the Government is presented, the Board holds that the contractor has not sustained its burden of proof for entitlement to an equitable adjustment, and the appeal will be denied.

Appeal of R & P Equipment Co., IBCA-1088-11-75 (Sept. 28, 1979) 86 I.D. 527

Jurisdiction

An assignee under an assignment of the proceeds of a contractor's claim before the Board which had been executed subsequent to completion of performance and the filing of the appeal by the contractor, is not permitted to participate in the appeal, since the Board's jurisdiction, pursuant to the Disputes clause, extends only to the parties to the contract or to their duly qualified successors.

Appeal of Evergreen Engineering, Inc., IBCA-990-5-73 (Jan. 14, 1975)

An appeal by a concessionaire at a wildlife refuge who alleges that Government harassment of the public, failure to repair roads and other actions resulted in a decrease of business and who seeks therefor to be relieved of payment of a semi-annual franchise fee of 3 percent of gross receipts required under the concession agreement and given the right to sell beer, inter alia, is dismissed for lack of jurisdiction, since the agreement contains no adjustment provisions and the relief requested entails reformation of the agreement, but is remanded to the contracting officer, who has wide discretion under the agreement to provide relief, for further consideration in the light of the Board's opinion.

Appeal of Pirate's Cove Marina, IBCA-1018-2-74 (Feb. 25, 1975) 83 I.D. 445

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

An appeal will be dismissed where the claim on which it is based arose from a mistake in connection with the contractor's bid, resulting from the failure of his timely dispatched telegraphic bid modification to be received prior to bid opening and where it is clear that he intended to file his appeal in the General Accounting Office.

Appeal of E. L. Larsen Co., IBCA-1054-1-75 (Mar. 25, 1975)

An Oil and Gas Supervisor of the Geological Survey has authority to demand prejudgment interest based upon the failure of an oil and gas lessee to pay timely royalties owed to the Government, despite the fact that the Supervisor is an employee of the Executive Branch.

Atlantic Richfield Co., 21 IBLA 98 (June 30, 1975) 82 I.D. 316

Where a construction contractor's bid for furnishing and erecting a steel building was slightly in excess of 53 percent of the next low bid and the record indicates that the contractor's bid may have been occasioned by a misunderstanding as to the specification requirements, but fails to show that the contractor was requested to or did verify its bid price to award, the Board finds that it is without jurisdiction to grant relief based upon a mistake in bid, noting, however, that the appellant may be entitled to relief in another forum.

Appeal of J. E. Piercey, IBCA-1013-12-73 (Oct. 17, 1975)

Where an appeal is timely the absence from a contracting officer's letter of a terminal paragraph advising the contractor of his right of appeal under the Disputes clause is not a basis for remand to the contracting officer.

Claims of constructive change under a cost-plus-fixed-fee contract first presented in the notice of appeal are outside the jurisdiction of the Board and are remanded to the contracting officer for the issuance of new or supplemental findings.

Appeal of VTN Colorado, Inc., IBCA-1073-8-75 (Oct. 29, 1975) 82 I.D. 527

A contractor's claim for additional costs attributed to the Government's delay in requesting contemplated installation services under a contract calling for the furnishing of governors for hydraulic turbines is dismissed for want of jurisdiction where the Board finds that the claim asserted is not redressable under the Changes clause of Standard Form 32 (Supply Contract) or under the special Suspension of Deliveries (or Services) clause which reserves to the Government the right to suspend services and preserves the contractor's right to make claim therefor but fails to provide that any costs attributable to such suspension shall be recoverable by way of an adjustment to the contract price.

Appeal of Cheston Co., IBCA-1093-1-76 (Nov. 19, 1976) 84 I.D. 924

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

An appeal taken by a subcontractor in its own name is dismissed where the Board finds the subcontractor has no standing to invoke the provisions of the Disputes Clause as a means of securing an adjudication by the Board of the rights and obligations of the contesting parties.

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 29, 1977) 84 I.D. 119

An insurance company is refused permission to participate directly in prosecution of an appeal proceeding with a view to recovering the amount paid to the contractor under a builder's risk insurance policy as part of the contractor's differing site conditions claim, where the grounds assigned for the participation are that the interests of the contractor and the insurance company may well prove to be adverse and that the insurance company has the right to participate directly by reason of its status as a partial subrogee, the Board finding (i) that the privity of contract rule rather than the real party in interest rule is controlling in appeal proceedings and (ii) that it has no authority under the Disputes clause to adjudicate the rights of the contractor and the insurance company should they prove to be adverse, irrespective of whether such rights are asserted by the insurance company under a release and assignment of interest executed by the contractor or as a partial subrogee and without regard to the fact that the appellant had authorized the insurance company to file a separate complaint and to prosecute its claim through its own attorneys in the appellant's name.

Appeal of Zurn Engineers, IBCA-1176-12-77 (July 20, 1978) 85 I.D. 279

A claim by a concessioner under a National Park Service Contract is dismissed as beyond the purview of the Board's jurisdiction where the contract contains no disputes clause and by its express terms the Contract Disputes Act of 1978 is not applicable to the claim asserted.

Appeal of Yosemite Park and Curry Co., IBCA-1232-12-78 (Mar. 16, 1979) 86 I.D. 197

The award of a contract to a statutorily debarred bidder was properly canceled upon discovery of the debarred status and there being no valid contract between the parties, the Board is without jurisdiction to consider an appeal.

Appeal of City Window Cleaners, IBCA-1218-10-78 (June 12, 1979) 86 I.D. 329

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

A contractor may not proceed under the provisions of the Contract Disputes Act of 1978 where the appeal is from a final decision of the contracting officer rendered and received by the appellant prior to the effective date of the Act.

Appeals of Gregory Lumber Co., Inc., IBCA-1237-12-78, 1238-12-78, 1239-12-78, 1240-12-78 (Sept. 28, 1979) 86 I.D. 520

Substantial Evidence

A multi-item appeal under a contract for construction of a fish barrier is sustained for those items where Government changes in the contract resulted in extra expense and where such expense could be determined from the record.

Appeal of Robert P. Jones (Contractor), IBCA-1002-8-73 (May 6, 1975)

Termination for Default

Generally

Where a contractor has given notice that it had no intention of performing the contract unless the contract price was increased to cover the rise in material costs and had made no effort to order required supplies, the Government could terminate the contract for default in advance of the time specified for delivery.

An economic rise in costs of materials after a fixed price supply contract is executed does not excuse a contractor from performing the contract.

Appeal of SBM Manufacturing Co., IBCA-1032-4-74 (May 29, 1975)

When contractor fails to perform pursuant to specifications in a janitorial service contract and is given notice to correct the deficiencies but fails to do so and offers no excusable cause justifying the failure the contract can properly be terminated for default.

Appeal of Ballwebers Cleaning Service, IBCA-1057-1-75 (Oct. 2, 1975)

Where a construction contractor's bid for furnishing and erecting a steel building was slightly in excess of 53 percent of the next low bid and the record indicates that the contractor's bid may have been occasioned by a misunderstanding as to the specification requirements, but fails to show that the contractor was requested to or did verify its bid prior to award, the Board finds that it is without jurisdiction to grant relief based upon a mistake in bid, noting, however, that the appellant may be entitled to relief in another forum.

Where a contract for furnishing and erecting a steel building was terminated for default and the contractor appealed the termination contending that the specifications were written around the product of a particular manufacturer and that under the material and workmanship clause of the General Provisions (Standard Form 23-A, Oct. 1969 Edition) it was entitled to furnish an "equal" product, the Board holds that the restrictive nature of the specifications is no defense to the termination where the evidence fails to establish that the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

Generally--Continued

building offered was, in fact, equal to the building described in the specifications.

Appeal of J. D. Piercey, IBCA-1013-12-73 (Oct. 17, 1975)

Where a construction contractor failed to appeal from a notice of termination for default which included findings that the contractor's delay in performing the work was not due to excusable causes, but did file a timely appeal from a damage assessment for, *inter alia*, the increased cost of completing the work, the Board denied the Government's motion to strike paragraphs of the complaint alleging that the contractor's delay was due to excusable causes and that the termination for default was improper since under the so-called *Fulford* doctrine, which has been held equally applicable to construction contracts, an appeal from a damage or excess cost assessment following a termination for default allows the contractor to contest the propriety of the termination.

Where certain paragraphs of a complaint filed by a construction contractor in an appeal from a damage assessment following a termination for default raised issues as to the propriety of the termination, the Board denied a Government motion to strike those paragraphs based on contentions that the contractor had agreed that delay in completion of the work was not excusable and that the contractor's agreement to a revised date for completion of the work precluded it from raising issues as to the excusability of delays occurring prior to the agreement, since it is well settled that accord and satisfaction is an affirmative defense which must be pleaded and proved and that allegations of accord and satisfaction raise factual issues as to the intent of the parties of the time of the alleged accord.

Appeal of Airco, Inc., IBCA-1074-8-75 (Apr. 6, 1976)
83 I.D. 137

A default termination is found to be proper where no special circumstances were shown to exist justifying a contractor's refusal to proceed with performance in accordance with the contracting officer's decision pending the resolution of the dispute.

Appeals of Willie H. Petterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Feb. 28, 1977)

Under a contract requiring contractor to provide all necessary material, equipment and labor, the contractor's admission that it did not have adequate equipment or an efficient work force, as well as a lack of experience in the work required to be performed does not meet the burden of proof to justify an extension of time.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

When contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

Generally--Continued

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978)
85 I.D. 12

Where the evidence shows no meeting of the minds between a completing surety and the Government on the matter of the surety's liability for liquidated damages, the Government does not waive the right to assess liquidated damages under a novation theory merely by allowing the surety, otherwise liable for liquidated damages under the contract, to complete performance of the contract terminated for default.

Appeal of General Construction Corp. of America by Financial Indemnity Co. (Its Surety), IBCA-1178-2-78 (Mar. 29, 1979)
86 I.D. 206

When a contractor failed to furnish the number of laborers required under a service contract and failed to cure such deficiency after a notice to show cause why the contract should not be terminated for default, the Board held that termination for default was proper and further held that the Government should continue to withhold earnings under the contract to satisfy first the wage claims by unpaid employees of the contractor as determined by the Department of Labor pursuant to the Service Contract Act of 1965 and secondly to satisfy any claim for excess costs by the contracting agency.

Appeal of Andy's Excavating, IBCA-1236-12-78 (Sept. 19, 1979)
86 I.D. 469

When the Government could not require delivery of a refrigerated storage unit within the original delivery schedule because the building in which the unit was to be installed was not finished and the Government thereafter continued to negotiate changes in specifications and delivery dates with the contractor, the Board held that the Government had waived the original delivery schedule and that the Government did not regain the right to terminate the contract for default since there was no mutual agreement on a new delivery date and the Government's unilateral attempt to reestablish a specific contractual delivery date was unreasonable as not being within the performance capabilities of the contractor at the time the notice was given.

Appeal of Kenney Refrigeration, IBCA-1230-12-78 (Sept. 28, 1979)
86 I.D. 503

Excess Costs

When the contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default and assessing excess reprocurement costs and liquidated damages.

Appeal of Timothy Mason, IBCA-1076-9-75 (July 25, 1976)
83 I.D. 297

CONTRACTS--Continued

FORMATION AND VALIDITY

Generally

In a case where the Government (i) rejected certain conditions attached to the contractor's offer to perform at the contract unit price additional excavation due to a directed change, (ii) determined that the contractor was entitled to an extension of 82 days as the time required to perform the additional excavation which was accepted by the contractor, (iii) recognized that the contractor might be entitled to an additional extension due to certain operations being extended into the inclement winter weather, and (iv) subsequently granted the contractor a 20-day time extension due to unusually severe weather, the Board finds the contractor to be entitled to an equitable adjustment for increased costs of working in winter weather which were the direct and inevitable consequence of the directed change, rejecting Government contentions that the contractor's claim was barred by accord and satisfaction or that it represented costs for working in inclement weather for which the contract made no provision.

Appeal of Hensel Phelps Construction Co., IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

An internal decision memorandum signed by the Secretary of the Interior which recommends a contract negotiating position cannot ripen into a binding contract with an entity who has relied and acted upon some position recommended in the memorandum.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

Authority to Make

Where a construction contractor contended that the contracting officer's enforcement of a contract requirement for roll-over protective structures on all equipment regardless of age constituted a change because the requirement was contrary to standards issued by the Secretary of Labor under the Occupational Health and Safety Act (29 U.S.C. § 651 *et seq.* (1970)) and therefore void, the Board examined the contention in the light of OSHA and also under the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 *et seq.* (1970)) and concluded that, while it was unlikely that either statute was intended to preclude a Federal agency from contractually imposing more stringent safety requirements than prescribed by the Secretary of Labor, it was not necessary to decide the question since appellant's remedy for an alleged illegal clause was a protest in other forums prior to bidding and award.

Appeal of Paul E. McCollum, Sr., IBCA-1080-10-75 (Feb. 24, 1976) 83 I.D. 43

Where an award is made to a firm while one of the partners is under debarment for violation of a labor statute due to administrative oversight, the contracting officer is without authority to make a valid award, and the purported contract is void ab initio.

Appeal of City Window Cleaners, IBCA-1218-10-78 (June 12, 1979) 86 I.D. 329

Bid Award

A rejected bid in an outer continental shelf oil and gas lease sale may be reconsidered and accepted when it is in the public interest to do so. The essential elements in allowing such a reconsideration are the fairness and impartiality of the sale toward all bidders. In a situation where a bid was initially rejected as too low for the tract identified in the bid and the bidder immediately requests reconsideration because he intended to bid for a different tract, where the tract number stated in the bid corresponds to the block number of the intended tract, where all other relevant data in the bid corresponds to the intended tract and only to the intended tract, and where no other person submitted a bid for the intended tract, it is proper to reconsider the bid to determine if it is in the public interest to accept the bid for the intended tract.

Alaska Oil and Minerals Corp., 29 IBLA 224 (Mar. 23, 1977) 84 I.D. 114

The Bureau of Land Management may not accept a bid in a competitive lease sale where the bid proposes a royalty different from that set out in the lease sale notice.

Lee E. Loeffler, 33 IBLA 18 (Nov. 22, 1977)

In a competitive materials sale, submission of the required 10 percent deposit in cash with the sealed bid is permissible under the regulations and not a ground for rejection of the highest bid. Therefore, a protest against acceptance of the bid for that reason is properly denied.

Roy Blake, 38 IBLA 151 (Dec. 5, 1978)

Where the contractor's bid is accepted during an extension of the bid acceptance period conditioned upon the contractor not being prejudiced by changes resulting from energy related shortages, the Board finds that the contractor's conditional acceptance of a change order increasing prices for asphaltic materials to a certain date continued the bid qualification in effect and does not preclude recovery of asphaltic price increases thereafter.

Nielsons, Inc., IBCA-1126-9-76 (Mar. 8, 1979) 86 I.D. 182

Under 43 CFR 3120.3-1, rejection of a high bid tendered at a sale of competitive oil and gas leases will be affirmed on appeal where the case file contains memoranda from the U.S. Geological Survey sufficient to establish that the rejection has a reasonable basis in fact.

Gerald S. Ostrowski (On Reconsideration after Remand), 44 IBLA 17 (Nov. 6, 1979)

Cost-type Contracts

A cost-plus-fixed-fee contractor's claim for costs in excess of the estimated cost of the contract, incurred in correcting deficiencies in Government-furnished property, was denied where the contractor knew or should have known that costs being incurred would exceed the estimated cost, but failed to give the notice required by the Limitation of Cost clause and evidence failed to furnish any basis for excusing the contractor's failure to give the required notice. The contractor's claim for additional fee on the extra work was sustained since the Limitation of Cost clause is not applicable to such claims.

Appeal of Booz, Allen & Hamilton, Inc., IBCA-1027-3-74 (Mar. 24, 1976) 83 I.D. 95

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Cost-type Contracts--Continued

Under a cost-plus-fixed-fee contract, a cost overrun is allowed where the Government's refusal to fund the overrun was based on appellant's failure to give timely notice under the Limitation of Cost clause and a subsequent audit report finds that the appellant was not aware of a 22 percent increase in the actual overhead rate until a post-performance audit was completed in accordance with the appellant's approved accounting practices.

Appeal of California Earth Sciences Corp., IBCA-1138-12-76 (Mar. 3, 1978) 85 I.D. 75

A Government motion for reconsideration is denied where the Board finds that a cost estimate (cost and pricing data) was not a firm offer to perform the work within the hours and at the prices or rates specified, but was rather simply the initial basis for negotiating a cost-plus-fixed-fee contract.

Appeal of W. F. Sigler & Associates, IBCA-1159-7-77 (Apr. 14, 1978) 85 I.D. 167

Formalities

When a Federal procurement regulation makes an interest clause mandatory and the contract omits the clause, it is incorporated under the Christian doctrine.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (July 15, 1977) 84 I.D. 407

Legality

Where an award is made to a firm while one of the partners is under debarment for violation of a labor statute due to administrative oversight, the contracting officer is without authority to make a valid award, and the purported contract is void ab initio.

Appeal of City Window Cleaners, IBCA-1218-10-78 (June 12, 1979) 86 I.D. 329

Mistakes

Where a construction contractor's bid for furnishing and erecting a steel building was slightly in excess of 53 percent of the next low bid and the record indicates that the contractor's bid may have been occasioned by a misunderstanding as to the specification requirements, but fails to show that the contractor was requested to or did verify its bid prior to award, the Board finds that it is without jurisdiction to grant relief based upon a mistake in bid, noting, however, that the appellant may be entitled to relief in another forum.

Appeal of J. D. Piercey, IBCA-1013-12-73 (Oct. 17, 1975)

Negotiated Contracts

Where a request for proposals for the construction of a pipeline provided that certain pipe and fittings for the pipeline would be furnished by the Government and appellant's proposal, reasonably interpreted, excepted to material the request for proposals provided was to be furnished by the contractor, the Board sustains the contractor's claim for material it furnished, holding that the Bureau, in failing to seek confirmation of its interpretation of appellant's proposal, accepted the risk of the accuracy of its interpretation.

Appeal of Wm. T. Montin d/b/a Montin Construction Co., IBCA-1051-12-74 (May 29, 1975)

When the Government issues a RFP to a sole source and the sole source submits three different proposals at different times and the Government issues a second and somewhat different solicitation and finally the Government and the sole source sign another document which is somewhat different from all prior solicitations and proposals and is complete in itself, that document is the contract and supersedes all prior solicitations and proposals.

Appeal of W. F. Sigler & Associates, IBCA-1159-7-77 (Feb. 16, 1978) 85 I.D. 41

Mere negotiations for a new contract do not imply rescission of an existing contract.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

PERFORMANCE OR DEFAULT

Acceleration

Where in moving for reconsideration of a decision denying its claim for constructive acceleration, the contractor contended that the bureau's failure to promptly investigate its claim of delay due to unusually severe weather amounted to a denial of a request for a time extension and that the denial plus other actions of Bureau inspectors constituted an order to complete the work by the specified completion date irrespective of excusable delay and thus was an acceleration order, the Board ruled that a denial of a request for a time extension was insufficient in and of itself to constitute constructive acceleration and reviewing the evidence, affirmed the denial of the claim, holding that the actions of the inspectors were regarded as suggestions by the Contractor and accepted or rejected depending on whether the suggestions were practical or economical.

Appeal of Iversen Construction Co. (a/k/a ICCBCC), IBCA-981-1-73 (Apr. 19, 1976) 83 I.D. 175

Acceptance of Performance

A construction contractor's claim for an equitable adjustment based on alleged defective specifications and for corrective work ordered by the Government as a condition to final acceptance of the project was denied, where the specification errors relied upon were obvious, there was no evidence that the contractor had been thereby misled to its detriment and the record did not establish that the corrective work ordered and performed was beyond the requirements of the contract. A claim for costs incurred in replacing door locks was allowed where the evidence established that locks ordered installed by the contracting officer were not a requirement of the contract.

Appeal of J. D. Piercey, IBCA-1035-6-74 (July 16, 1975)

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Acceptance of Performance--Continued

When contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

When the contractor offers materials which the contracting officer discovers are not in total compliance with the specifications, the contracting officer may accept the material if he finds it to be in the best interests of the Government. That acceptance, however, is not final and conclusive if based on, or induced by, a misrepresentation of a material fact.

Where the Government does not issue a written change order and does not give a verbal order which is interpreted by the contractor as a change, no contract change has occurred and the contractor may submit materials conforming to the original specifications. The Government's mere exercise of its option to accept nonconforming goods does not in and of itself constitute a contract change.

Appeal of Nasatka & Sons, Inc., IBCA-1157-6-77 (Sept. 28, 1979) 86 I.D. 513

Breach

Where a contract for furnishing and erecting a steel building was terminated for default and the contractor appealed the termination contending that the specifications were written around the product of a particular manufacturer and that under the material and workmanship clause of the General Provisions (Standard Form 23-A, Oct. 1969 Edition) it was entitled to furnish an "equal" product, the Board holds that the restrictive nature of the specifications is no defense to the termination where the evidence fails to establish that the building offered was, in fact, equal to the building described in the specifications.

Appeal of J. D. Piercey, IBCA-1013-12-73 (Oct. 17, 1975)

Where the Government obligates substantial funds to buy equipment and services but allows an option to extend the lease for computers that are essential for full performance of the contract to lapse and then fails to obligate funds to buy or lease these computers, the Government has prevented performance of the critical part of the contract and the contractor is justified in stopping work.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

A permit for use of land in the Lower Colorado River Area is properly terminated where construction, unauthorized by the terms of the permit, is undertaken by individuals occupying the premises, whose earlier application for an assignment of rights of the permittee has been rejected by BLM.

Robert D. Wall, D-79-7 (Aug. 23, 1979)

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Compensable Delays

In a case where the Government (i) rejected certain conditions attached to the contractor's offer to perform at the contract unit price additional excavation due to a directed change, (ii) determined that the contractor was entitled to an extension of 82 days as the time required to perform the additional excavation which was accepted by the contractor, (iii) recognized that the contractor might be entitled to an additional extension due to certain operations being extended into the inclement weather, and (iv) subsequently granted the contractor a 20-day time extension due to unusually severe weather, the Board finds the contractor to be entitled to an equitable adjustment for increased costs of working in winter weather which were the direct and inevitable consequence of the directed change, rejecting Government contentions that the contractor's claim was barred by accord and satisfaction or that it represented costs for working in inclement weather for which the contract made no provision.

Appeal of Hensel Phelps Construction Co., IBCA-1010-11-73 (May 8, 1975) 82 I.D. 155

The Government did not cause any compensable delay in the commencement of the work when the Government issued the notice to proceed as soon as the performance and payment bonds required by the contract were received.

Appeal of The Minnesota Chippewa Tribe, IBCA-1025-3-74 (May 19, 1975) 82 I.D. 238

When the Government is obligated to provide the requisite surveying and staking services on a project the contractor is entitled to compensation for delays caused directly by the Government's failure to have sufficient surveying and staking performed or caused directly by erroneous surveying and staking.

Appeal of H. M. Byars Construction Co., and Nevada Paving Inc. (Joint Venture), IBCA-1098-2-76 (June 7, 1977) 84 I.D. 260

An order to build a curved wall was a constructive change outside change order #1 which was for a straight wall. Thus, the claim for extra costs for curved construction and for stand-by time caused by the Government delay in staking wall is compensable.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 629

Excusable Delays

Where a contractor has given notice that it had no intention of performing the contract unless the contract price was increased to cover the rise in material costs and had made no effort to order required supplies, the Government could terminate the contract for default in advance of the time specified for delivery.

An economic rise in costs of materials after a fixed price supply contract is executed does not excuse a contractor from performing the contract.

Appeal of SBM Manufacturing Co., IBCA-1032-4-74 (May 29, 1975)

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Excusable Delays--Continued

Delay caused by failure to have sufficient equipment and personnel available is not a valid reason to allow an extension of time to perform the work required by the contract.

Appeal of Kent Nicoll, IBCA-1040-8-74 (July 31, 1975)

When contractor fails to perform pursuant to specifications in a janitorial service contract and is given notice to correct the deficiencies but fails to do so and offers no excusable cause justifying the failure the contract can properly be terminated for default.

Appeal of Ballwebers Cleaning Service, IBCA-1057-1-75 (Oct. 2, 1975)

A claim for a longer time extension under a construction contract due to unusually severe weather is denied where the contracting officer obtained the local climatological data and after reviewing the data granted a time extension when appellant failed to dispute the data or offer any evidence to support its claim for a longer period.

Appeal of David M. Cox, Inc., IBCA-1079-10-75 (Apr. 7, 1976)

When the contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default and assessing excess reprocurement costs and liquidated damages.

Appeal of Timothy Mason, IBCA-1076-9-75 (July 29, 1976) 83 I.D. 297

Where the Government failed to explain the presence of water which entered a 230 KV reactor while the reactor was under Government control and protected by Government security measures and where the water caused more extensive repairs to the reactor than would otherwise have been necessary, the Board found no basis for determining the portion of the delay for which each party was responsible and held that liquidated damages could not be charged for any of the delay.

Appeal of Addison Construction Co., IBCA-1064-3-75 (Sept. 29, 1976) 83 I.D. 353

While the burden of showing an excusable cause of delay to exist is on the construction contractor, the invoking of this rule presupposes that the Government will leave this responsibility with the contractor, or, if it undertakes to correspond directly with the subcontractors or suppliers concerning delays experienced, it will inform them of the criteria set forth in the contract for establishing an excusable cause of delay.

Appeal of The J. C. Hester Co., Inc., IBCA-1114-7-76 (Jan. 14, 1977)

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Excusable Delays--Continued

Failure to pay subcontractors, suppliers and employees on time and thereby causing delays does not constitute an excusable cause of delay justifying an extension of time.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

Where the Government obligates substantial funds to buy equipment and services but allows an option to extend the lease for computers that are essential for full performance of the contract to lapse and then fails to obligate funds to buy or lease these computers, the Government has prevented performance of the critical part of the contract and the contractor is justified in stopping work.

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

The Government's opposition to appellant's request for a hearing and its motion for partial summary judgment in a default termination case are both denied where the contractor contends and the Government denies that the delays experienced by the contractor in attempting to perform the contract were excusable and the Board finds that determining whether delays are excusable in such circumstances involves resolving a fact question which should only be done after the parties have had an opportunity to present their evidence at a hearing where one has been requested.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1156-7-77 (Apr. 14, 1978) 85 I.D. 77

The Government's use of records of the preceding 10 years of seasonal rainfall was proper in determining the days of delay which should have been anticipated by the contractor during the winter months in question.

A contractor, who encounters unusually severe weather as it pertains to one phase of contract work but works on other phases of work within that same period, is not entitled to a contract time extension, since the contract work as the whole was not delayed.

Holidays falling within a contract period should have been anticipated by the contractor as nonworking days and thus cannot be adjudged as unforeseeable days of delay.

Appeal of Wunschel & Small, Inc., IBCA-1263-5-79 (Sept. 28, 1979)

Impossibility of Performance

Where the Government obligates substantial funds to buy equipment and services but allows an option to extend the lease for computers that are essential for full performance of the contract to lapse and then fails to obligate funds to buy or lease these computers, the Government has prevented performance of the critical part of the contract and the contractor is justified in stopping work.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Impossibility of Performance--Continued

A claim that performance of a well drilling contract is impossible is denied where the evidence shows only that the contractor has been unable to penetrate beyond 38 feet using two different drilling rigs and there is no evidence to show that no known drilling methods or equipment could enable the construction of a vertically aligned well at the required depth.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Sept. 26, 1978) 85 I.D. 384

When the Government issues a contract which, unknown to the contractor, is defective because insufficient borrow is available from the designated borrow sites, and thereafter the Government issues three de facto change orders, at three different times, to make sufficient borrow available, and where the record discloses that the Government failed to reveal preaward knowledge that haul or overhaul would be required and that it had decided to substantially alter a borrow depth limit on the drawings, the Government is liable under the changes clause for the additional costs shown to be attributable to the Government's actions.

A&J Construction Co., Inc., IBCA-1142-2-77 (Dec. 28, 1978) 85 I.D. 468

Inspection

A special provision authorizing the contracting officer to adjust or revise the limits of the work during performance to reflect the conditions encountered and thereby provide for maximum use of material available with the funds allotted is found to vest the contracting officer with no plenary authority to direct the placement of the beach fill where the authorization to adjust or revise the limits of the work is circumscribed by the use of the word "approximate."

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Where a transformer failed shortly after being placed in service and the contractor acted promptly after notice to return the transformer to the factory for repairs at no cost to the Government, the Board held that the Government could not invoke provisions of the inspection clause of the contract relating solely to correction of defects at the point of installation to charge the contractor with the costs of removing and reinstalling the transformer.

Appeal of Traver Engineering Corp., IBCA-1100-3-76 (Mar. 31, 1977) 84 I.D. 164

The Government failed to show that a rejected wall did not conform to the plans and specifications.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

When contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Inspection--Continued

Where the contract specifies a particular test procedure to be used by the Government for compliance testing, and the contractor alleges improper test procedures by the Government, contractor has the burden of proving that the test procedures actually used by the Government were contrary to those specified, and that it incurred extra costs as a result thereof. Contractor failed to sustain its burden of proof, except with respect to the superspan claim.

Euro Construction Co., IBCA-1042-9-74 (Aug. 30, 1978) 85 I.D. 353

When the contractor offers materials which the contracting officer discovers are not in total compliance with the specifications, the contracting officer may accept the material if he finds it to be in the best interests of the Government. That acceptance, however, is not final and conclusive if based on, or induced by, a misrepresentation of a material fact.

Appeal of Nasatka & Sons, Inc., IBCA-1157-6-77 (Sept. 28, 1979) 86 I.D. 513

Release and Settlement

Where the practice of a construction contractor was to separate claims for an equitable adjustment for increased costs due to a change from its claims for delays to the work caused by the change and the evidence established that the contractor's delay claim resulting from a change was pending before the contracting officer at the time the contractor agreed to and executed a modification settling the equitable adjustment for direct costs attributable to the change, the Government's contention that the delay claim was barred by accord and satisfaction was rejected since it is well settled that an agreement does not operate as an accord as to matters not contemplated by the agreement.

Where the contractor's offer to perform certain changed work for a lump sum was accepted and the agreement and the price were incorporated into a modification which the contractor executed without reservation or exception and the lump sum was subsequently paid, the contractor's subsequent claim for delays to the work attributable to the change was barred by accord and satisfaction.

Appeal of Hensel Phelps Construction Co., IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

A contractor's acceptance of a change order is found to be no bar to consideration of a claim under the Changes clause where the evidence shows that the claim involved had neither arisen nor been discussed prior to the time the change order in question was executed.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Where certain paragraphs of a complaint filed by a construction contractor in an appeal from a damage assessment following a termination for default raised issues as to the propriety of the termination, the Board denied a Government motion to strike those paragraphs based on contentions that the contractor had agreed that delay in completion of the work was not excusable and that the contractor's agreement to a revised date for completion of the work precluded it from raising issues as to the excusability of delays occurring prior to the agreement, since it is well settled that accord and satisfaction is an affirmative defense which must be pleaded and proved and that allegations

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Release and Settlement--Continued

of accord and satisfaction raise factual issues as to the intent of the parties at the time of the alleged accord.

Appeal of Airco, Inc., IBCA-1074-8-75 (Apr. 6, 1976) 83 I.D. 137

Insertion of the words "no exceptions" in a release executed by the contractor was held not to bar further consideration of the contractor's pending request for an extension of time where the Government's instructions for executing the release dealt only with claims in stated dollar amounts and directed the contractor to insert "no exceptions" if no such claims were to be filed and where in their conduct the parties did not treat the release as final.

Appeal of Addison Construction Co., IBCA-1064-3-75 (Sept. 29, 1976) 83 I.D. 353

Where cattle are admitted to an allotment at the beginning of the usual grazing season but prior to the issuance of a license for that season, and payment is later made by a check which recites that it is "payment in full for 1975 grazing fee," the Bureau of Land Management may properly deposit the check, allotting part of the proceeds for the grazing license for the rest of the season, and deposit the remainder of the proceeds in a suspense account pending resolution of the trespass. Such action indicates that the check was not accepted in settlement of the trespass damages, and cashing the check does not constitute an accord and satisfaction of the trespass damages.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

Where a contractor voluntarily signs directives specifying the payments to be made for the additional work ordered without taking any exception thereto, the unqualified acceptance of the directives involved is found to be binding upon the contractor to the extent of the direct costs entailed in performance of the additional work.

Appeal of William P. Bergan, Inc., IBCA-1130-11-76 (Feb. 2, 1979) 86 I.D. 65

Where the Government has accepted a bid conditioned upon the contractor not being prejudiced by changes resulting from energy related shortages and the parties agree in a change order to an increase in price for asphaltic materials, the Board finds the agreement does not constitute an accord and satisfaction precluding further price increases where the evidence shows there was no meeting of the minds and this was evident to the contracting officer prior to execution of the change order.

Nielsons, Inc., IBCA-1126-9-76 (Mar. 8, 1979) 86 I.D. 182

Substantial Performance

To support a claim of substantial completion of a construction contract, appellant must establish that the project was capable of adequately serving its intended purpose.

Appeal of David M. Cox, Inc., IBCA-1079-10-75 (Apr. 7, 1976)

A default termination is found to be proper where no special circumstances were shown to exist justifying a contractor's refusal to proceed with performance in accordance with the contracting officer's decision pending the resolution of the dispute.

Appeals of Willie H. Patterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Feb. 28, 1977)

Where one of the parties was to receive money and a rocked timber road according to specifications as consideration for a contract, and the road is not completed according to specification, nor is it suitable for the intended purpose, the doctrine of substantial performance will not apply as one of the parties is not compelled to accept a measure of performance fundamentally less than that bargained for.

Tomco, Inc., 29 IBLA 298 (Mar. 30, 1977)

Suspension of Work

A claim under the Suspension of Work clause is denied where the Board finds (i) that the contracting officer acted within his discretion in issuing an order directing the suspension of all work in the wake of a devastating storm at Cape Hatteras with a view to determining whether and, if so, how the work under a beach nourishment contract should proceed or, alternatively, whether the contract should be terminated for the convenience of the Government; (ii) that the contractor had failed to show that its costs would have been any less if the stop work order had been issued at an earlier time; (iii) that suspending the contract work for the 5 working days covered by the stop order did not involve delaying the work for an unreasonable period of time; and (iv) that showing the contract work to have been suspended or delayed for an unreasonable period of time is a prerequisite to recovery under the Suspension of Work clause in all cases including those in which a written order to suspend work has been given as contemplated by paragraph (a) of the clause.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Appellant's claim for an equitable adjustment under the changes clause for costs alleged to have been incurred when funds available for earnings became exhausted and work on the contract was suspended for 160 days is denied where construction was suspended more than 3 months ahead of the date on which appellant's earnings were scheduled to reach the amount of the fund reservation and where subsequent fund reservations kept the total amount of funds reserved for earnings above the scheduled earnings shown in appellant's own construction program which the Government had approved.

Appeal of S. A. Healy Co., IBCA-944-12-71 (Mar. 31, 1976) 83 I.D. 118

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Suspension of Work--Continued

A contractor's claim for additional costs attributed to the Government's delay in requesting contemplated installation services under a contract calling for the furnishing of governors for hydraulic turbines is dismissed for want of jurisdiction where the Board finds that the claim asserted is not redressable under the Changes clause of Standard Form 32 (Supply Contract) or under the special Suspension of Deliveries (or Services) clause which reserves to the Government the right to suspend services and preserves the contractor's right to make claim therefor but fails to provide that any costs attributable to such suspension shall be recoverable by way of an adjustment to the contract price.

Appeal of Cheston Co., IBCA-1093-1-76 (Nov. 19, 1976) 84 I.D. 924

Waiver and Estoppel

A cost-plus-fixed-fee contractor's claim for costs in excess of the estimated cost of the contract, incurred in correcting deficiencies in Government-furnished property, was denied where the contractor knew or should have known that costs being incurred would exceed the estimated cost, but failed to give the notice required by the Limitation of Cost clause and the evidence failed to furnish any basis for excusing the contractor's failure to give the required notice. The contractor's claim for additional fee on the extra work was sustained since the Limitation of Cost Clause is not applicable to such claims.

Appeal of Booz, Allen & Hamilton, Inc., IBCA-1027-3-74 (Mar. 24, 1976) 83 I.D. 95

Upon reconsideration, the Board finds that where the Government issues an "Extra Work Order" under a "force account" provision for minor extra work not provided for in other pay items, at agreed on rates, the contractor is entitled to be paid for inefficiency, rework costs and delay costs when moisture causes borrow material placed under the extra work order, to become muddy. However, the appellant's failure to give prompt notice of the claim under the force account provision caused the Government to order added pay item work, thus the claim must be reduced by the amount of added pay item payment.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Nov. 4, 1977) 84 I.D. 898

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

CONVEYANCES

GENERALLY

Where the purchaser from the railroad of unpatented land believed at the time of his purchase that the land was mineral, and there was physical evidence of its mineral character, or if conditions were such that the purchaser should have known then that the land was excepted from the grant to the railroad, he was not a purchaser in good faith within the "innocent purchaser" proviso of sec. 321(b) of the Transportation Act of 1940.

Southern Pacific Transportation Co., Jay R. Fogal; Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976) 83 I.D. 1

A color of title application is properly rejected where the applicant has failed to establish how conveyances in her chain of title describing lands different from that described in her application, and different from each other, give color of title to the applied for land for the requisite period of time.

Generally, conveyances which describe only a "possessory interest" in a parcel of land do not constitute a claim or color of title within the contemplation of the Color of Title Act.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

Extrinsic evidence may be used to make definite the description in a private deed which contains a latent ambiguity, either to determine actual or color of title. Therefore, a color of title claimant may introduce extrinsic evidence to establish whether the deeds in her chain of title were based upon plats, records and other documents which can be read together with the deeds as creating a color of title beyond the actual title shown on an official Federal survey plat.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

Where a corporation allegedly acquired a group of unpatented mining claims, but the instruments of conveyance and the abstract of title are subject to various objections by the Government's title examiner, which the corporation finds are difficult or impossible to cure, the corporation nonetheless may receive a patent to the claims pursuant to the Act of July 9, 1870 (R.S. § 2332; 30 U.S.C. § 38 (1970)), by demonstrating its qualifications under that Act.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977) 84 I.D. 550

Where a corporate patent applicant can trace its ownership of the claim back through a series of conveyances to a mesne owner who had title to the claim quieted in her by the decree of a court of competent jurisdiction, there is no need to look behind the quiet title decree to an earlier break in the chain of title unless there is reason to believe that the interest which is unaccounted for was not disposed of by the litigation. However, a court decree which merely distributes the assets of a decedent's estate is not a "quiet title decree" in this context, and does not ordinarily foreclose the interests of third parties who hold the record title to mining claims.

Frattain Contractors, Inc., 37 IBLA 233 (Oct. 16, 1978)

INTEREST CONVEYED

In the absence of legislation by Congress, a patent from the United States does not convey an implied easement by way of necessity across public land.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976) 83 I.D. 518

CONVEYANCES--Continued

REVERTERS

The Recreation and Public Purposes Act, and the regulations thereunder, do not authorize additional payment for the issuance of a supplemental patent (which voids an earlier patent's reversionary provision) as an alternative to forfeiture for noncompliance with the Act's provision that land patented under the Act only be used for an established or definitely proposed public project within a reasonable time following issuance of patent. The Department can alienate interests in public lands only within the limits authorized by law; therefore, issuance of a supplemental patent which eliminates the Act's mandatory reversionary provision is impermissible.

Okanogan County Public Utility, District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

COOPERATIVE AGREEMENTS

A communitization agreement involving an oil and gas lease for Cheyenne-Arapaho allotted lands may properly be approved by the Area Director, BIA, pursuant to 25 CFR 172.24 where that agreement incorporates all the terms and conditions of a State pooling order which joined the lessee with all other holders of mineral interests in the other tracts involved in the unit agreement.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (Feb. 8, 1977)

COURTS

A demand by the Geological Survey for prejudgment interest for delayed payment of additional royalties owed to the Government is not necessarily unenforceable in the courts because it was not asserted as a counterclaim under Rule 13(a) of the Federal Rules of Civil Procedure.

Atlantic Richfield Co., 21 IBLA 98 (June 30, 1975)
82 I.D. 316

A consent decree obtained by the Securities and Exchange Commission establishes no precedent for cases involving different parties. Allegations of Federal securities law violations in connection with Federal oil and gas leasing should be directed to the Securities and Exchange Commission, the agency with jurisdiction over such matters. The jurisdiction of the Board of Land Appeals does not extend to matters exclusively under the jurisdiction of the SEC, but goes to matters involving compliance with oil and gas leasing statutes and regulations.

Marion Bacil, 35 IBLA 366 (June 23, 1978)

A consent decree obtained by the Securities and Exchange Commission (SEC) establishes no precedent for cases involving other parties. The Board of Land Appeals lacks jurisdiction over matters delegated to the SEC. Allegations of Federal Securities Law violations should be directed to the SEC rather than to the Board of Land Appeals.

William Miller, 36 IBLA 349 (Aug. 28, 1978)

COURTS--Continued

Where a corporate patent applicant can trace its ownership of the claim back through a series of conveyances to a mesne owner who had title to the claim quieted in her by the decree of a court of competent jurisdiction, there is no need to look behind the quiet title decree to an earlier break in the chain of title unless there is reason to believe that the interest which is unaccounted for was not disposed of by the litigation. However, a court decree which merely distributes the assets of a decedent's estate is not a "quiet title decree" in this context, and does not ordinarily foreclose the interests of third parties who hold the record title to mining claims.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 16, 1978)

DELEGATION OF AUTHORITY

GENERALLY

The Bureau of Land Management has been delegated authority over the adjudication of reclamation homestead applications.

Richard F. Crill et al., 18 IBLA 426 (Feb. 14, 1975)

A stipulation requiring an oil and gas lessee to provide a certified statement by an archaeologist concerning the existence of archaeological values on lands to be disturbed by the lessee does not constitute an unlawful delegation of authority because the purpose of the statement is to notify an authorized officer of the Department who retains the authority to determine whether the archaeological data are significant and whether such data are being or may be irrevocably lost or destroyed.

Cecil A. Walker, Alan C. F. Dillet, 26 IBLA 71 (July 5, 1976)

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Ross et al., 27 IBLA 4 (Sept. 17, 1976)

Where the Secretary has declined to exercise his jurisdiction, a decision rendered by this Board is final for the Department. Hence, statements by BLM and arguments of the Solicitor, while valuable to the Board, are not binding upon the Board.

H. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 7, 1979)

A decision by the Bureau of Land Management canceling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

Blue Star, Inc., Atomic Western, Inc., Fremont Energy Corp., Ivor Adair, 41 IBLA 333 (July 11, 1979)

DELEGATION OF AUTHORITY--Continued

EXTENT OF

Since the Bureau of Land Management has no authority to issue a public land order withdrawing land, such authority existing only in the Secretary, the Under Secretary, and the Assistant Secretaries of the Department of the Interior, recommendations by officers of the Bureau of Land Management relating to withdrawals are not subject to review under the provisions of 43 CFR 4.450-2 or 43 CFR 4.410.

City of Kotzebue, 26 IBLA 264 (Aug. 20, 1976) 83 I.D. 313

DESERT LAND ENTRY

GENERALLY

An arrangement by which an entity obtains mortgages on desert land entries and also obtains leases of a possible 12-year duration on the desert land entries, the result of which is the vesting of effective control of the entries in such entity, constitutes a holding within the purview of sec. 7 of the Act of Mar. 3, 1877, *as amended*.

"Hold." Any person or entity which has acquired actual possession and the right thereof to more than 320 acres of desert lands "holds" such acreage within the meaning of the prohibition of sec. 7 of the Act of Mar. 3, 1877, *as amended*.

"Otherwise." As used in sec. 7 of the Act of Mar. 3, 1877, *as amended*, "no person or association of persons shall hold by assignment or otherwise," "otherwise" is not limited to other means equivalent to assignment but rather embraces all mechanisms whereby control of and benefit from an entry or entries are accumulated and transferred.

Violation of the prohibition against holding an excess of 320 acres constitutes a failure to comply with the requirements of law and such entries are properly canceled.

Estoppel will not lie against the Government where there is no showing that the parties to illegal agreements relied in any way on the statements or acts of Government officials.

United States v. G. Patrick Morris et al., 19 IBLA 350 (Apr. 7, 1975) 82 I.D. 146

Sec. 7 of the Act of Mar. 3, 1891, provides that no person or association of persons shall hold by assignment or otherwise, prior to the issue of patent, more than 320 acres of arid or desert lands; the terms "hold," "assignment" and "otherwise" are words of broad significance and will be defined in such manner to effectuate the purposes of the Act, to wit, to prevent anyone from holding more than 320 acres of desert lands to the exclusion of bona fide settlers or the entrymen of record.

Any person or association of persons who controls, possesses and receives substantial benefits from desert lands will be regarded as "holding" such lands within the meaning of the Act of Mar. 3, 1891.

United States v. Golden Grigg et al., 19 IBLA 379 (Apr. 7, 1975) 82 I.D. 123

DESERT LAND ENTRY--Continued

GENERALLY--Continued

Excepting in the State of Nevada, no person shall be entitled to make entry of desert lands unless he be a resident citizen of the State in which the land sought to be entered is located. An applicant's conditional, future-oriented intention to reside in the State is insufficient to qualify.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975) 82 I.D. 377

Alton and Velcie Hadlock, 32 IBLA 372 (Oct. 31, 1977)

A Federal district court jury verdict in a suit to cancel desert land patents, that the entrymen and their purchaser under an illegal executory contract did not commit fraud against the United States, does not collaterally estop this Department from adjudicating a contest grounded on the illegal executory contract against the purchaser's own entry, because the legal standard applicable in the subsequent contest is different than that in the fraud action--a desert land entry can be subject to cancellation for acts that do not constitute fraud.

"Hold by assignment or otherwise." The purchaser of desert land under an illegal executory contract to convey the land subsequent to patent "holds" that land within the meaning of the acreage limitation of sec. 7 of the Desert Land Act, *as amended*, 43 U.S.C. § 329 (1970).

Rights under an executory contract to acquire property entered into by the husband alone are presumed to be community property under California law, and a conveyance as community property to husband and wife in settlement of litigation regarding the contract corroborates the presumption; both spouses stand on equal footing with respect to charges, based on the executory contract, of violating the acreage limitations in sec. 7 of the Desert Land Act, 43 U.S.C. § 329 (1970).

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

It is proper to reject applications for desert land entries filed for lands which have been classified by the Secretary, pursuant to the petition classification procedure set forth in 43 CFR Subpart 2450, as unsuitable for desert land entry and, therefore, are not open for disposition under the desert land laws. The decision of the Secretary is the final Departmental action and the applicants cannot have a review on the merits of an appeal from the subsequent decision rejecting their applications.

Guy A. Martin, Ada E. Martin, 26 IBLA 254 (Aug. 18, 1976)

Rejection of a desert land entry application because the applicant has failed to supply satisfactory evidence of a right to the permanent use of sufficient water to irrigate and reclaim the irrigable portion of the entry will be set aside and the applicant's request for a hearing granted where there is conflicting evidence in the record concerning the sufficiency of the water supply and where the applicant has alleged facts which, if proved, would result in a different conclusion.

Dixie L. Bjornestad et al., 27 IBLA 201 (Oct. 6, 1976)

DESERT LAND ENTRY--Continued

GENERALLY--Continued

Rejection of an application for desert land entry on account of a failure to include therein post office addresses of witnesses making witness statements is without prejudice to refiling of a corrected application where there is no competing interest for the same land.

William J. Hart, Lucile E. Hart, 30 IBLA 138 (May 12, 1977)

A desert land entry petition-application is properly rejected where the lands applied for therein have been withdrawn by a public land order to protect recreational, historical, and geological values in public lands along the North Platte River.

Objections raised on appeal to the Interior Board of Land Appeals to the merits of withdrawal of public lands in order to protect recreational, historical, and geological values in public lands along the North Platte River, will not vitiate its effect as a bar to the availability of the lands under the desert land laws, as it is not within the Board's function or authority to take the steps necessary to revoke the withdrawal, restore the lands to the operation of the public land laws, and classify it as suitable for disposition as a desert land entry.

Cecilia J. Cuin, 36 IBLA 250 (Aug. 15, 1978)

APPLICANTS

Excepting in the State of Nevada, no person shall be entitled to make entry of desert lands unless he be a resident citizen of the State in which the land sought to be entered is located. An applicant's conditional, future-oriented intention to reside in the State is insufficient to qualify.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975)
82 I.D. 377

Alton and Valois Hadlock, 32 IBLA 372 (Oct. 31, 1977)

APPLICATIONS

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George M. Crapo, Richard L. Crapo, 19 IBLA 208 (Mar. 21, 1975)

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against subsequent applications which were allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piecemeal adjudication.

Michael E. Heaney, 21 IBLA 339 (Aug. 18, 1975)

Nelda E. McAndrew, 24 IBLA 205 (Mar. 22, 1976)

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed State application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia C. Ellis, 24 IBLA 387 (May 3, 1976)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed therefor and any payment submitted therewith will be returned. Should there be a subsequent reclassification as suitable for disposal under the desert land laws, the land will be opened to entry on an equal opportunity basis.

One who submits a desert land entry petition-application for lands which have been classified as being unsuitable for disposal under the desert land laws gains no preference right to such lands should they be reclassified as disposable under the desert land laws. Lands which are reclassified as suitable for disposal will be opened to entry on an equal opportunity basis.

A desert land entry petition-application for land classified as being unsuitable for disposal under the desert land laws may not be held in suspense pending the possible future availability of the land.

Ralph G. Faulkner et al., 26 IBLA 110 (July 26, 1976)

Failure to answer completely a question on an application form for a desert land entry concerning citizenship of the applicant is not an adequate basis for rejecting the application when the requested information is readily apparent elsewhere on the application form.

Failure to include as required by 43 CFR 2521.2(b) the post office addresses of witnesses whose statements are part of an application for desert land entry is an adequate basis for rejecting the application.

Rejection of an application for desert land entry on account of a failure to include therein post office addresses of witnesses making witness statements is without prejudice to refiling of a corrected application where there is no competing interest for the same land.

William J. Hart, Lucile E. Hart, 30 IBLA 138 (May 12, 1977)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Dulce Van Tassel, 33 IBLA 221 (Dec. 22, 1977)

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

A desert land entry petition-application is properly rejected where the lands applied for therein have been withdrawn by a public land order to protect recreational, historical, and geological values in public lands along the North Platte River.

Cecilia J. Cain, 36 IBLA 250 (Aug. 15, 1978)

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are segregated from desert land entry, and the classification has not been terminated by either a reclassification or publication in Federal Register of termination of classification, BLM properly denied petition-application for desert land entry.

Paul E. Jenkins, 39 IBLA 141 (Jan. 29, 1979)

Melvin V. Frandsen, Mary C. Frandsen, 43 IBLA 130 (Sept. 26, 1979)

ASSIGNMENT

Where an allowed desert land entry was assigned to a qualified individual and the assignment was duly approved, a subsequent determination that the entry was illegal from its inception because the original entryman was not qualified will not afford a basis for cancellation of the entry where it is established that the assignee was unaware of his assignor's lack of qualifications and proceeded in good faith to develop the entry.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975)
82 I.D. 377

CANCELLATION

Violation of the prohibition against holding an excess of 320 acres constitutes a failure to comply with the requirements of law and such entries are properly canceled.

Estoppel will not lie against the Government where there is no showing that the parties to illegal agreements relied in any way on the statements or acts of Government officials.

United States v. G. Patrick Morris et al., 19 IBLA 350 (Apr. 7, 1975)
82 I.D. 146

Any desert land entry made for the use and benefit of others with intent to circumvent the provisions of the desert land laws must be regarded as fraudulent and will be canceled.

United States v. Golden Grigg et al., 19 IBLA 379 (Apr. 7, 1975)
82 I.D. 123

Where an allowed desert land entry was assigned to a qualified individual and the assignment was duly approved, a subsequent determination that the entry was illegal from its inception because the original entryman was not qualified will not afford a basis for cancellation of the entry where it is established that the assignee was unaware of his assignor's lack of qualifications and proceeded in good faith to develop the entry.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975)
82 I.D. 377

DESERT LAND ENTRY--Continued

CANCELLATION--Continued

In the case of a desert land entry contestee who violates the 320-acre limitation on holding desert land because he is the "purchaser" of two other 320-acre entries under an illegal executory contract to convey after patent, all entries held by the "purchaser" are subject to cancellation, and the Department may proceed by way of contest against the "purchaser's" own entry, which was not a subject of the illegal contract.

The doctrine of voluntary rescission--which allows an entryman, who was, although in good faith, party to a contract that violated the desert land law, to proceed to the merits of his proof upon repudiation of the contract--will not be applied when: (1) repudiation of the contract was not truly voluntary; (2) the rescission occurred long after the entries' lives expired; (3) the illegal contract involved a complex of four entries; and (4) no other mitigating circumstances are present.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

A desert land entry is properly canceled when the statutory life of the entry, including an extension that was granted, has expired without reclamation and cultivation of the entry, as required under the desert land law, and the entrywoman fails to show that she is entitled to a further extension of time to complete the requirements of the desert land law.

Pamela M. Brewer, 26 IBLA 366 (Sept. 8, 1976)

Rejection of an application for desert land entry on account of a failure to include therein post office addresses of witnesses making witness statements is without prejudice to refiling of a corrected application where there is no competing interest for the same land.

William J. Hart, Lucile E. Hart, 30 IBLA 138 (May 17, 1977)

Where the deadline for making final proof of compliance on a desert land entry passes without the entryman having made final proof, his entry is properly canceled, even though a request for an additional extension of time within which to file such final proof was pending on the deadline date, where the request for extension is subsequently denied.

Thomas C. Hickey, 34 IBLA 86 (Feb. 22, 1978)

CLASSIFICATION

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Dulce Van Tassel, 33 IBLA 221 (Dec. 22, 1977)

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are segregated from desert land entry, and the classification has not been terminated by either a reclassification or publication in Federal Register of termination of classification, BLM properly denied petition-application for desert land entry.

Paul E. Jenkins, 39 IBLA 141 (Jan. 29, 1979)

Continued--

DESERT LAND ENTRY--Continued

CLASSIFICATION--Continued

Melvin V. Frandsen, Mary C. Frandsen, 43 IBLA 130 (Sept. 26, 1979)

DISTRIBUTION SYSTEM

Neither the law nor the regulations prohibit the use of a portable aluminum pipe irrigation system in the reclamation of lands in a desert entry, nor is there any affirmative requirement that the irrigation system or specific components thereof be permanently installed on the entry.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975)
82 I.D. 377

EXTENSION OF TIME

An application for an extension of time for the submission of final proof of a desert land entry is properly rejected where the entrywoman is unable to show that her failure to reclaim the land in her entry within the statutory life of the entry is due, without fault on her part, to unavoidable delay in the construction of irrigation facilities intended to convey water to the entry, and where it appears, rather, that the failure was the result either of the lack of financing, lack of diligence in carrying out the development work, or lack of foresight in anticipating the burden of doing the work. A second extension of time to file final proof on the entry is properly denied to an entrywoman who fails to show that she utilized a first extension in a reasonable effort to accomplish the development work.

Pamela M. Brower, 26 IBLA 366 (Sept. 8, 1976)

Application for second extension of time for submission of final proof on desert land entry is properly rejected where entryman is unable to show that failure to reclaim land in entry within statutory life of entry is because of unavoidable delay, without fault on part of entryman, in cultivation and construction of irrigation works.

Ivan J. Brower, 32 IBLA 286 (Sept. 27, 1977)

Where a desert land entryman admits that there were alternate measures which might have been taken to achieve compliance by the deadline date therefor, as extended, but which he failed to employ, BLM's determination that resulting delays were not beyond his control, and that accordingly he is not entitled under 43 CFR 2522.5 to a third extension of time within which to make final proof, will not be disturbed. Inadequacy of financial resources to take available alternative steps does not excuse his failure to comply.

A third extension of time to file final proof of compliance on a desert land entry is properly denied to an entryman who acknowledges that he failed to make full use of previous extensions.

Where the deadline for making final proof of compliance on a desert land entry passes without the entryman having made final proof, his entry is properly canceled, even though a request for an additional extension of time within which to file such final proof was pending on the deadline date, where the request for extension is subsequently denied.

Where the entryman makes admissions and submits evidence which establish conclusively that his failure to "prove up" his desert land entry during its initial term and two extensions was not the result of unavoidable delay, and that the failure was not without fault on his part, no further administrative proceedings are required prior to rejecting his application for a third extension.

Thomas D. Hickey, 34 IBLA 86 (Feb. 22, 1978)

A third extension of time to file final proof of compliance on a desert land entry is properly denied to an entryman where there is no reasonable prospect that, if the extension is granted, he will be able to make final proof of reclamation, irrigation, and cultivation within the time required by law.

Howard D. Marshall, 43 IBLA 271 (Oct. 15, 1979)

FINAL PROOF

The doctrine of voluntary rescission--which allows an entryman, who was, although in good faith, party to a contract that violated the desert land law, to proceed to the merits of his proof upon repudiation of the contract--will not be applied when: (1) repudiation of the contract was not truly voluntary; (2) the rescission occurred long after the entries' lives expired; (3) the illegal contract involved a complex of four entries; and (4) no other mitigating circumstances are present.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

LANDS SUBJECT TO

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed State application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia C. Ellis, 24 IBLA 387 (May 3, 1976)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Dulce Van Tassel, 33 IBLA 221 (Dec. 22, 1977)

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are segregated from desert land entry, and the classification has not been terminated by either a reclassification or publication in Federal Register of termination of classification, BLM properly denied petition-application for desert land entry.

Paul M. Jenkins, 39 IBLA 141 (Jan. 29, 1979)

Melvin V. Frandsen, Mary C. Frandsen, 43 IBLA 130 (Sept. 26, 1979)

DESERT LAND ENTRY--Continued

WATER SUPPLY

Rejection of a desert land entry application because the applicant has failed to supply satisfactory evidence of a right to the permanent use of sufficient water to irrigate and reclaim the irrigable portion of the entry will be set aside and the applicant's request for a hearing granted where there is conflicting evidence in the record concerning the sufficiency of the water supply and where the applicant has alleged facts which, if proved, would result in a different conclusion.

Dixie L. Bjornestad et al., 27 IBLA 201 (Oct. 6, 1976)

ENDANGERED SPECIES ACT OF 1973

SECTION 7

Consultation

Sec. 7 of the Endangered Species Act and the Secretary's regulations require consideration of not only the impacts of the particular activity subject to consultation, but also the cumulative effects of other activities or programs which may have similar impacts on a listed species or its habitat.

In determining which projects or activities should be evaluated while reviewing cumulative impacts to endangered species or their habitat, a "rule of reason" should be applied which considers, *inter alia*, the sequence of those impacts, the degree of administrative discretion remaining to be exercised, and similar factors.

Cumulative Impacts - Sec. 7 of the Endangered Species Act (Dec. 28, 1973, 87 Stat. 884, 892), M-36905 (July 19, 1978) 85 I.D. 275

Critical Habitat

A Federal agency's responsibility to insure against critical habitat modification or destruction cannot be satisfied with the adoption of project modifications which ameliorate and reduce, but do not eliminate, the adverse impacts of the project upon critical habitat.

The Applicability of the Concept of Mitigation to Critical Habitat, M-36895 (July 14, 1977) 84 I.D. 403

Mitigation

A Federal agency's responsibility to insure against critical habitat modification or destruction cannot be satisfied with the adoption of project modifications which ameliorate and reduce, but do not eliminate, the adverse impacts of the project upon critical habitat.

The Applicability of the Concept of Mitigation to Critical Habitat, M-36895 (July 14, 1977) 84 I.D. 403

ENVIRONMENTAL POLICY ACT

(*See also* National Environmental Policy Act of 1969--if included in this Index.)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Citizens' Committee to Save Our Public Lands, 29 IBLA 48 (Feb. 16, 1977)

An application for a communication site under 43 U.S.C. § 961 (1970) should be denied where utilization of an existing right-of-way is practical under 43 U.S.C. § 1763 (19__) and where the proposed site would have an adverse impact on the environment.

"Practical." Under 43 U.S.C. § 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

When parties are to offer evidence as to costs, to a mining claimant, of measures required by statute or regulation to mitigate environmental impact from development of a mine, it would be helpful for a Government contestant to assist an intervening State government and the claimant in computation of such costs; however, under 42 U.S.C. § 4332 (1970), an environmental impact statement is not required prior to the nondiscretionary Federal action of issuance of a mineral patent.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

To secure the exemption under sec. 404(r) of the Federal Water Pollution Control Act for projects described in an environmental statement, compliance with seven specific conditions is required. The exemption does not apply to the maintenance of existing Federal projects, but only to new construction. While the exemption provides an alternative procedure to achieve compliance with sec. 404 of the Act for a limited category of Federal projects under very specific conditions, it does not lessen the substantive requirements that apply to the discharge of dredged or fill material.

Permit Requirements for Discharge of Dredged or Fill Material Under Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. § 1344, M-36915 (Aug. 27, 1979) 86 I.D. 400

ENVIRONMENTAL QUALITY

(*See also* Air Quality, Pollution, Water Pollution Control--if included in this Index.)

GENERALLY

As a condition precedent to the issuance of an oil and gas lease, the Department of the Interior may require an applicant to accept a reasonable surface management stipulation for the protection of wildlife and watershed values.

Richard P. Cullen, 18 IBLA 414 (Feb. 10, 1975)

The execution of special stipulations as a condition precedent to issuance of oil and gas leases for land located in a national forest may be required at the discretion of the Secretary of the Interior in order to protect environmental and other land use values. The need for the stipulation should be clear and the stipulation should be a reasonable means to the intended purpose. The Forest Service's recommended stipulations will be carefully considered by the Department, but the

ENVIRONMENTAL QUALITY--Continued

GENERALLY--Continued

final authority for oil and gas leasing on public domain land rests in this Department.

Earl R. Wilson, 21 IBLA 392 (Aug. 27, 1975)

The execution of special stipulations as a condition precedent to the issuance of oil and gas leases for land located in national forests may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational, and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

Bill J. Maddox, 22 IBLA 97 (Sept. 22, 1975)

Where the reason given for the partial rejection of a noncompetitive geothermal lease application is that the Environmental Analysis Record has recommended against leasing the lands because they lie within an area associated with historic trails, and the records indicate that the State Office has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether the lands should be leased with protective stipulations.

Richard C. Hoefle, 24 IBLA 181 (Mar. 16, 1976)

Kirk Greene, 24 IBLA 262 (Mar. 29, 1976)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where a Bureau of Land Management district-wide environmental analysis record establishes the likelihood that significant archaeological values are prevalent in the district and may be found in the land embraced by leases in that district, a special protective stipulation is not unreasonable solely because no archaeological values have yet been discovered in the lands in the lease offer.

Oil and gas lessees must bear the expenses occasioned by compliance with stipulations for the protection of the environment and other land use values.

Cecil A. Walker, Alan C. F. Dille', 26 IBLA 71 (July 9, 1976)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated basis for the imposition of the stipulation is the threat of oil and gas activities to automobile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern E. Jones et al., 26 IBLA 165 (Aug. 4, 1976)

ENVIRONMENTAL QUALITY--Continued

GENERALLY--Continued

It is proper to include environmental protection stipulations in a phosphate lease even though the stipulations apply to privately owned surface lands overlying the federally reserved mineral estate under lease or to privately owned lands used in conjunction with the lease.

Cominco American, Inc., 26 IBLA 329 (Sept. 1, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to areas withdrawn for wildlife conservation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes, 27 IBLA 46 (Sept. 23, 1976)

An application for a communication site under 43 U.S.C. § 961 (1970) should be denied where utilization of an existing right-of-way is practical under 43 U.S.C. § 1763 (19__) and where the proposed site would have an adverse impact on the environment.

"Practical." Under 43 U.S.C. § 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, proposed special stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest. It is the Bureau's responsibility to impose stipulations which are necessary, appropriate and reasonably related to oil and gas activities, and a stipulation which would forbid the lessee to occupy the surface must be set aside on appeal where BLM fails to provide adequate justification for its imposition and fails to show that it has considered less stringent stipulations.

Neva H. Henderson, 31 IBLA 217 (July 6, 1977)

Where, rather than delay action on an oil and gas lease offer pending a wilderness review and management decision pursuant to sec. 603 of the Federal Land Policy and Management Act, the Bureau of Land Management proposes to issue the lease immediately subject to a "no surface occupancy" stipulation under the apparently mistaken impression that the applicant had so requested, the decision will be set aside and action on the lease offer will be deferred until a final decision can be made.

Dell K. Hatch and Amoco Production Co., 33 IBLA 138 (Dec. 19, 1977)

ENVIRONMENTAL QUALITY--Continued

GENERALLY--Continued

It is appropriate for the Bureau of Land Management to reject a right-of-way application for a pipeline to convey water from a spring on public lands to private lands where it has determined that the overall effect of granting similar applications in a given area would be adverse to the public interest and allowance of one application might establish a precedent contrary to the public interest.

Stanley S. Leach, Roxanna B. Leach, 35 IBLA 53 (May 9, 1978)

Where the primary reason for the State Office rejection of a millsite application appears to be that the Environment Protection Agency has recommended against the issuance of a patent because of possible adverse effects on the environment which the Federal Government will not be able to control if patent issues, the decision of the State Office will be reversed where the applicant shows that he has fulfilled the requirement of 30 U.S.C. § 42 (1970), and where the State having jurisdiction over the operation after patent issues has a strict environmental protection law with safeguards against possible adverse effects on the environment.

Utah International, Inc., 36 IBLA 219 (Aug. 8, 1978)

The Secretary of the Interior is obligated to support and implement the national policy expressed by Congress in the National Environmental Policy Act of 1969.

Southern California Motorcycle Club, Inc., Sierra Club, 42 IBLA 164 (Aug. 17, 1979)

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, on appeal such special stipulations must be supported by valid reasons which will be weighed by the Department with due regard for the public interest, and where the stipulation and reason therefore does not appear in the record, the record must be augmented on remand.

James M. Chudnow, 43 IBLA 375 (Oct. 31, 1979)

The Bureau of Land Management, on behalf of the Secretary of the Interior, may condition issuance of a lease on the execution of a no surface occupancy stipulation where on appeal the record shows that the Bureau has adequately considered the factors involved and the stipulation is a reasonable means to accomplish proper Departmental purposes.

H. E. Shillander, 44 IBLA 216 (Dec. 11, 1979)

ENVIRONMENTAL STATEMENTS

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

Paula J. Jones, 24 IBLA 76 (Feb. 24, 1976)

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where a Bureau of Land Management districtwide environmental analysis record establishes the likelihood that significant archaeological values are prevalent in the district and may be found in the land embraced by leases in that district, a special protective stipulation is not unreasonable solely because no archaeological values have yet been discovered in the lands in the lease offer.

Cecil A. Walker, Alan C. E. Dille', 26 IBLA 71 (July 9, 1976)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Citizens' Committee to Save Our Public Lands, 29 IBLA 48 (Feb. 16, 1977)

To secure the exemption under sec. 404(r) of the Federal Water Pollution Control Act for projects described in an environmental statement, compliance with seven specific conditions is required. The exemption does not apply to the maintenance of existing Federal projects, but only to new construction. While the exemption provides an alternative procedure to achieve compliance with sec. 404 of the Act for a limited category of Federal projects under very specific conditions, it does not lessen the substantive requirements that apply to the discharge of dredged or fill material.

Permit Requirements for Discharge of Dredged or Fill Material Under Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. § 1344, M-36915 (Aug. 27, 1979)
86 I.D. 400

EQUITABLE ADJUDICATION

GENERALLY

Where the claimant of a trade and manufacturing site who has substantially complied with the requirements of law and regulation makes a legitimate contract for the conditional sale of the business to another before filing his application for patent, equitable adjudication will be invoked to prevent an intervening land classification action from operating to destroy the interest of both the claimant and his buyer and defeating the purpose of the Act.

Paul E. Jovick, 19 IBLA 283 (Apr. 7, 1975)

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimants concerning the validity of the claims with the intention that the claimants should act in reliance thereon, with the result that the claimants were thereby induced to do so, to their ultimate damage.

United States v. A. R. Fleming et al., 20 IBLA 83 (Apr. 24, 1975)

A request for equitable adjudication relief to permit purchase of a headquarters site claim is premature in the absence of an application to purchase the claim.

The equitable adjudication authority is not appropriate and may not be applied to permit the filing of a headquarters site notice of location after the land has been withdrawn.

Rene P. Lamoureux, 20 IBLA 243 (May 16, 1975)

Equitable adjudication authority is not appropriate and may not be applied to permit filing of a homesite notice of location after the land has been withdrawn.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

Equitable adjudication is not appropriate where a headquarters site applicant has not substantially complied with the law.

Ray W. Ferguson, 22 IBLA 160 (Sept. 30, 1975)

Where an applicant to purchase a trade and manufacturing site or a headquarters site states he was frustrated in completing his improvements and showing sufficient use of the land as required by the law because of more difficult or complex problems than anticipated, but has not shown that this operation could reasonably be expected to be successful, such problems will not afford any basis for equitable adjudication of his application to purchase.

United States v. Ronald P. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

A factual error by the Government is not a basis for imposing the extraordinary relief of equitable estoppel where the person seeking the estoppel became aware of the true facts shortly thereafter, had not substantially complied with the public land laws, and continued knowingly and repeatedly trespassing on lands not open to settlement, where the Government makes prompt, reasonable, and consistent efforts to correct any misunderstanding caused by this error, and where the Government's actions did not result in the foreclosure of an opportunity to assert a legal right.

A homestead claimant who contracts for the planting of "enough acreage to satisfy the homestead law" in an essentially worthless hay crop in an area of Alaska where there are no livestock, and with no intention to harvest or utilize it even though it successfully matured, has performed only a token compliance which is, prima facie, demonstrative of bad faith. A good faith devotion of the land to productive and profitable agricultural use is essential to satisfy the purpose and intent of the agricultural land entry laws.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

When a first-drawn oil and gas lease offer is disqualified because it is unsigned or undated, the Department's equitable adjudication authority may not be invoked to divest the first-*qualified* drawee of his preference right to a lease.

David L. Hansen, John D. Hurdle, John F. and Inez R. Cramer, 32 IBLA 272 (Sept. 27, 1977)

Where a mining claimant alleges that forest rangers allowed him to build and occupy a cabin on the claim without informing him that it was illegal to do so, it is not appropriate to estop the Government from declaring the claim null and void, for several reasons: mere acquiescence in an action is not "affirmative misconduct" by a Government employee, as it was not false representation or concealment of material facts done with the intent that the claimant rely thereon; the impression created by the inaction of the forest rangers was not erroneous and, so, claimant was not misled, as he could rightfully move the cabin to the site and occupy it as long as so doing was incident to mineral development of a valid mining claim; and because the claimant should have known that he could not live on the premises indefinitely despite his failure to develop the claim, and that he would have to move the cabin or lose it, if the claim was declared null and void.

United States v. Joseph Larsen and Perrin Larsen, 36 IBLA 130 (July 25, 1978)

Where land within a trade and manufacturing site is withdrawn from appropriation prior to cognizable occupancy and use for purposes of trade or manufacture under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, an invalid claim cannot be perfected, and appellant has not shown wherein she is entitled to equitable adjudication under 43 CFR 1871.1.

Sandy Fondy, 37 IBLA 40 (Sept. 18, 1978)

Equitable adjudication of an application to purchase a headquarters site claim filed at least 8 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

Rene P. Lamoureux d/b/a Frenchy Lamoureux, 39 IBLA 36 (Jan. 15, 1979)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

Dorothy Smith, 39 IBLA 306 (Feb. 23, 1979)

The Government is not estopped from rejecting oil and gas lease offers because the offerors' leasing agent alleges that he relied on a representation by officers of BLM that his disclaimer of his interest in the offer was valid and therefore failed to amend his service agreement with his clients to remove the interest-creating provision, where it appears that BLM did not in fact so represent.

Frederick W. Lowey et al., 40 IBLA 381 (May 18, 1979)

EQUITABLE ADJUDICATION--Continued

GENERALLY--Continued

The Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1976), repealed the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 to 270-3 (1970), with the exception of applications pending on Dec. 18, 1971. A State Office decision rejecting a Native allotment application for an additional parcel of land filed pursuant to the Act of May 17, 1906, after Dec. 18, 1971, will be affirmed. Equitable adjudication, which requires substantial compliance with the law, will not be invoked where there is no evidence that such an application was timely filed with BIA.

Nora L. Sanford, 43 IBLA 74 (Sept. 19, 1979)

SUBSTANTIAL COMPLIANCE

Where the claimant of a trade and manufacturing site who has substantially complied with the requirements of law and regulation makes a legitimate contract for the conditional sale of the business to another before filing his application for patent, equitable adjudication will be invoked to prevent an intervening land classification action from operating to destroy the interest of both the claimant and his buyer and defeating the purpose of the Act.

Paul M. Jovick, 19 IBLA 283 (Apr. 7, 1975)

Where a homestead entryman has cleared and broken ground and allowed a portion of the cleared, plowed acreage to grow up with a species of native wheat grass, such acreage is not "cultivated" within the meaning of 43 CFR 2567.5(b), and the entryman's final proof is properly rejected where it shows on its face that the native grass acreage constituted an indispensable portion of the entryman's attempt at meeting the cultivation requirements of the homestead laws. Since there was not substantial compliance with the cultivation requirements, equitable adjudication cannot be properly invoked.

Clarence Ray Mathis, 29 IBLA 150 (Mar. 4, 1977)

A factual error by the Government is not a basis for imposing the extraordinary relief of equitable estoppel where the person seeking the estoppel became aware of the true facts shortly thereafter, had not substantially complied with the public land laws, and continued knowingly and repeatedly trespassing on lands not open to settlement, where the Government makes prompt, reasonable, and consistent efforts to correct any misunderstanding caused by this error, and where the Government's actions did not result in the foreclosure of an opportunity to assert a legal right.

Where during the 5-year term of a homestead there is a failure to comply with the residence and cultivation requirements and the requirement of a habitable house, and where subsequent efforts meet only the requirement for a habitable house, there can be no equitable adjudication based on substantial compliance with the homestead law.

Wherein one year the homestead land is leveled and seed is hand broadcast on the ground in late October after the first frost in Alaska, and the following year seed is simply scattered on the snow by a claimant who asserts he is "not a farmer at all" and does not know whether this is accepted practice, the cultivation requirements of the law have not been substantially met.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

EQUITABLE ADJUDICATION--Continued

SUBSTANTIAL COMPLIANCE--Continued

Equitable adjudication of an application to purchase a headquarters site claim filed at least 8 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

Rene P. Lamoureux d/b/a Frenchy Lamoureux, 39 IBLA 36 (Jan. 15, 1979)

ESTOPPEL

The doctrine of collateral estoppel will not bar the administrative contest of the validity of five mining claims which, together with another claim, were the subject of previous condemnation actions for the taking of a temporary exclusive easement over the claims, where the issue of the validity of the individual claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance thereon, with the result that the claimant was thereby induced to do so, to his ultimate damage.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

A noncompetitive oil and gas lease applicant's failure to submit the statement of interest of the other parties in interest to the offer is not excused, nor is the Department estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease to the applicant on an offer which was deficient for the same reason.

Leon E. Flanagan et al., 25 IBLA 269 (June 28, 1976)

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy B. Cousins, 26 IBLA 223 (Aug. 17, 1976)

ESTOPPEL--Continued

An applicant for a private land exchange cannot benefit from the doctrine of equitable estoppel where no agent of the Government who was authorized to consummate the exchange falsely and materially misrepresented to or concealed material facts from appellant concerning the Government's position with respect to the proposed exchange.

Siesta Investments, Inc., 28 IBLA 118 (Nov. 15, 1976)

A lessee of the water from a well owned by the Federal Government, who agrees that his use of the water will not be used as a basis for obtaining a permanent water right and who nevertheless proceeds to try to obtain a water right in State court based on that use, will be estopped from asserting any resulting decree of the State court for any purpose.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977)
84 I.D. 87

Where an applicant for grazing privileges does not show the type of misconduct which would be a basis for estoppel against the Government, the provisions of 43 CFR 4115.2-1(e)(9)(i) and (e)(13)(i) cannot be waived on the basis of such misconduct.

A. D. Findlay (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

Where tests performed by the BLM to determine whether rock placed on a timber road met specifications were not completed until the timber purchaser had finished his work on the road, there can be no basis for estoppel even if that doctrine were otherwise applicable.

Tomco, Inc., 29 IBLA 298 (Mar. 30, 1977)

An estoppel of the Government to refuse acceptance of late rental payments is not created where in the past the BLM accepted rental payments after the anniversary date pursuant to 43 CFR 3103.3-2(e)(1) providing if the office to receive payment is closed on the anniversary date, payment will be considered timely if received on the next official working day.

A prerequisite of the reinstatement process is the tender of payment within 20 days of the anniversary date which protects the right of the lessee to petition for reinstatement. The check is then deposited in an unearned account to create a record of it, and bring it under accounting control, however, depositing of the check does not create an estoppel against the Government.

Adolph F. Muratori, 31 IBLA 39 (June 21, 1977)

The Government is not estopped from applying new provisions enacted in an amendment to the Mineral Leasing Act to an application for modification of an existing coal lease on account of laches, administrative delay, or misrepresentation by Government employees of the fact of Federal ownership of the land sought in the application.

Estate of Malcolm N. McKinnon, 31 IBLA 290 (July 22, 1977)

ESTOPPEL--Continued

The fact that a mining claimant has held a claim for many years and performed work on the claim does not, by itself, create any rights against the Government which will estop the Government from determining the validity of the claim. It is incumbent upon the locator of a mining claim to exercise considerable care in ascertaining the status of the land embraced in the claim and the limitations of his rights as the holder of an unpatented mining claim. Failure of a Government employee to advise appellant that the land embraced in the mining claim was closed to mining location cannot give life to an invalid claim.

Arthur W. Boone, 32 IBLA 305 (Sept. 30, 1977)

Estoppel will not be applied against the Government when the sole basis for so doing is a statement by an applicant for a prospecting permit that a Geological Survey employee indicated that he could file the application in his own name, since this statement was not necessarily a misrepresentation, and since in any event the applicant had no right to rely on this statement because the Geological Survey is not the agency authorized to make representations as to the proper filing of prospecting applications.

Billadean Patton, Essex Minerals, Inc., National Bulk Carriers, Inc., 32 IBLA 350 (Oct. 21, 1977)

The failure of a noncompetitive oil and gas lease offeror to complete the date on the simultaneous oil and gas drawing entry card is not excused, and the Department is not estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease in acceptance of an offer which was deficient for the same reason.

Zina A. Dogan, 33 IBLA 213 (Dec. 21, 1977)

Where a BLM employee allegedly misinforms a mining claimant concerning the filing of a patent application, the Government is not estopped from requiring that the resulting error be corrected.

Charles Bones, Mrs. Leonard Shipper, 33 IBLA 206 (Jan. 10, 1978)

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Felton R. Hall, 33 IBLA 349 (Jan. 18, 1978)

NZL Investment Corp., 36 IBLA 359 (Aug. 31, 1978)

Forrest S. McClinchey, 38 IBLA 211 (Dec. 6, 1978)

There is no estoppel applicable to the Department of the Interior where it has changed a clearly erroneous regulation to comport with an amendment to the oil and gas leasing laws enacted some 15 years previously. The Department is not precluded from correcting that which is "clearly erroneous."

Yates Petroleum Corp., 34 IBLA 7 (Feb. 8, 1978)

ESTOPPEL--Continued

The Government is not estopped from collecting royalty payments which are owed, even if it has accepted improper payments in the past.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

Long-term belief by Federal officers that land was subject to a valid patent, when, in fact, the land could not legally have been conveyed because of withdrawal or reservation, does not serve as a basis for divesting the Government of title to the land by estoppel.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Paul S. Couper, 35 IBLA 112 'May 15, 1978)

Clair B. Caldwell et al., 42 IBLA 139 (Aug. 16, 1979)

Where BLM reduced grazier's privileges because of his loss of ownership of base property from which his qualifications had not in fact been transferred away for attachment to other property owned by grazier, equitable estoppel is not invoked against BLM since grazier by his own testimony at hearing showed that he was not ignorant of true facts as to lack of transfer back of grazing qualifications and that he did not in fact rely to his detriment on BLM official's representations on that transfer back.

Roger J. Rasmusson, 36 IBLA 98 (July 13, 1978)

Where a mining claimant alleges that forest rangers allowed him to build and occupy a cabin on the claim without informing him that it was illegal to do so, it is not appropriate to estop the Government from declaring the claim null and void, for several reasons: mere acquiescence in an action is not "affirmative misconduct" by a Government employee, as it was not false representation or concealment of material facts done with the intent that the claimant rely thereon; the impression created by the inaction of the forest rangers was not erroneous and, so, claimant was not misled, as he could rightfully move the cabin to the site and occupy it as long as so doing was incident to mineral development of a valid mining claim; and because the claimant should have known that he could not live on the premises indefinitely despite his failure to develop the claim, and that he would have to move the cabin or lose it, if the claim was declared null and void.

United States v. seph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

Where the bidder may have understood from BLM that a bank draft was an acceptable form of remittance but submitted a sight draft, there is no basis for estoppel.

Mesa Petroleum Co., 37 IBLA 103 (Sept. 28, 1978)

ESTOPPEL--Continued

Reliance upon erroneous advice provided by a non-Governmental filing service cannot relieve an oil and gas applicant of an obligation imposed on him by regulation.

John G. Evans, 37 IBLA 364 (Nov. 2, 1978)

Reliance upon erroneous or incomplete information provided by Government employees cannot create any rights not authorized by law. 43 CFR 1810.3(c).

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescences of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

Reliance on erroneous information provided by Federal employees cannot create any rights not authorized by law.

W. R. and Margaret B. Collier, 39 IBLA 81 (Jan. 24, 1979)

Estoppel to preclude a charge of trespass is not invoked against BLM where BLM's partially completed fences on Federal land do not restrain cattle and there is no evidence that BLM agreed to construct and/or maintain said fences for the benefit of the grazier, and such grazier was at all times aware of these facts.

The grazing regulations (43 CFR 4140.1(b)(1), *inter alia*) (formerly 43 CFR 4112.3-1(a) and (b)) place the responsibility of controlling cattle squarely on the grazier, and Government range management policies as implemented under acts of Congress cannot be asserted to bar sanctions where trespasses have been proved, or to estop BLM from alleging trespasses.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

Dorothy Smith, 39 IBLA 306 (Feb. 23, 1979)

ESTOPPEL--Continued

BLM is not estopped to readjust a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), by its failure to readjust said lease prior to or immediately after expiration of its 20-year period.

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (May 10, 1979)

The Government is not estopped from rejecting oil and gas lease offers because the offerors' leasing agent alleges that he relied on a representation by officers of BLM that his disclaimer of his interest in the offer was valid and therefore failed to amend his service agreement with his clients to remove the interest-creating provision, where it appears that BLM did not in fact so represent.

Frederick W. Lowey et al., 40 IBLA 381 (May 14, 1979)

Reliance on incomplete information supplied by Bureau of Land Management employees cannot estop the United States or excuse compliance with a regulation.

Fred S. Ghelarducci, 41 IBLA 277 (June 28, 1979)

The elements of an estoppel are the following: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

Estoppel is available as a defense against the Government if the Government's wrongful conduct threatens to work a serious injustice and if the public's interest would not be unduly damaged by the imposition of estoppel.

Estoppel of the Government is an extraordinary remedy, especially as it relates to public lands, and is to be applied with the greatest care and circumspection.

Edward L. Ellis and Steve B. Ellis, 42 IBLA 66 (Aug. 8, 1979)

A delay in adjudication of an application by the Department cannot create rights contrary to law.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

Estoppel of the Government is an extraordinary remedy, especially as it relates to public lands, and is to be applied with the greatest care and circumspection.

The elements of an estoppel are the following: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

Estoppel is not available against the Government when the Government agent making representations acts beyond the scope of his authority. Furthermore, reliance upon information or the opinion of any officer or employee of BLM cannot operate to vest any right not authorized by law.

Dorothy Smith, Keith C. Hayes, 44 IBLA 25 (Nov. 6, 1979)

ESTOPPEL--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities will automatically terminate on the anniversary date of the lease upon failure of lessee to pay the minimum annual rental, despite a partial payment submitted on the basis of a partial relinquishment, which was ineffective because not filed by the record title holder pursuant to 43 CFR 3108.1, and despite issuance of a Bureau of Land Management decision subsequent to the anniversary date confirming a decreased annual rental.

R. J. Bradshaw, 44 IBLA 101 (Nov. 30, 1979)

A person filing a simultaneous offer for an oil and gas lease is presumed to understand the difference between a filing in the name of a trust and a filing in an individual capacity, and despite an allegation that the trust filing was instructed by unspecified Bureau of Land Management personnel, the principles of estoppel may not be invoked to change a defective trust filing into a filing by an individual.

Tony C. Nielsen, 44 IBLA 269 (Dec. 19, 1979)

EVIDENCE

GENERALLY

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

Nonrepresentative mineral samples alone cannot prove the existence of valuable mineralization exposed within a vein. If, however, other evidence establishes such mineralization, the samples may be given some weight to support geological inferences of the value of a lode mining claim.

Where the preponderance of the evidence in a mining claim contest supports an administrative law judge's dismissal of a contest complaint, that decision will not be disturbed upon appeal.

United States v. Kingsley Ranch Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

An administrative law judge has a duty to conduct a hearing in such a manner that all available relevant facts in a mining contest will be adduced. He should take special care to do so where a party is without counsel and there is confusion concerning the status of purported tendered evidence.

Evidence submitted on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

Where, prior to the rejection of her application, an applicant for a Native allotment was advised of findings which, unless rebutted, would result in the rejection of the application, and was afforded an extended period of time in which to submit additional evidence, evidence which is thereafter submitted for the first time on appeal from the rejection decision, without explanation of why it was not submitted when due, will not be favorably considered in adjudicating the propriety of the decision appealed from.

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Mary Ayojiak, 22 IBLA 384 (Nov. 21, 1975)

An appeal before the Board on remand from the Court of Claims with instructions to admit evidence, previously excluded under the parol evidence rule, for the purpose of showing a pre-award agreement or an express or implied concession as to the rate of use of helicopter services, is denied where the record, augmented as the Court directed, shows that the Government did not change its method of contracting at appellant's request but rejected the proposal to include a guaranteed minimum daily rate of use and where an internal memorandum from appellant's president shows that he understood at the time of award that the contract could be flown at the rate of 5 hours per day rather than the rate of 7 hours per day alleged later when the contract proved unprofitable.

Appeal of Inter*Helo, Inc., IBCA-713-5-68 (Ct. Cl. No. 54-74 (Dec. 1, 1975) 82 I.D. 591

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from a rejection of a Native allotment application in the absence of a satisfactory showing why the evidence was not submitted to Bureau of Land Management within the period afforded the applicant for the submission of such evidence.

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

Where the Government fails to present a prima facie case, a contestee, upon timely motion, may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record. Therefore, even if the Government has failed to make a satisfactory prima facie case, or the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderance of the evidence, bearing the risk of nonpersuasion if he fails.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

Although, in a mining claim contest, the Government may make a prima facie case of no discovery by the testimony of a mineral examiner that he has been on the land in issue and saw nothing of mineral value, a prima facie case is ordinarily not made where it is established that the examiner was not on the land in issue.

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

United States v. Arizona Mining and Refining Co., Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

In determining whether a profitable market existed for material from a particular mining claim from which no material has been sold, a hypothetical market must be created in which the new material plays its part. The new material from the claim at issue must be included with that from all other known potentially competitive sources in calculating the factor of supply. If the supply so calculated amounts to a superabundance and so overwhelms the existing demand as to reduce the value or profit increment to a level below that which would prove attractive to a prudent man, the material cannot be said to be marketable at a profit.

United States v. J. R. Osborne et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by contestee shows there has not been a discovery, it may be used in reaching a decision that the claim is invalid regardless of any defects in the prima facie case.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

Extrinsic evidence may be used to make definite the description in a private deed which contains a latent ambiguity, either to determine actual or color of title. Therefore, a color of title claimant may introduce extrinsic evidence to establish whether the deeds in her chain of title were based upon plats, records and other documents which can be read together with the deeds as creating a color of title beyond the actual title shown on an official Federal survey plat.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of

EVIDENCE--Continued

GENERALLY--Continued

fact is not required to believe or give any weight to testimony which is inherently incredible.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a proceeding to determine the validity of an unpatented mining claim the claimants must prevail, if at all, upon the strength of their own case, rather than upon any weakness in that of the Government.

United States v. R. B. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

When a mineral examiner testifies for the United States that a discovery has not been made on a mining claim, his opinion must be based on a proper factual foundation. However, he is not required to perform discovery work, to explore or sample beyond a claimant's workings, or to excavate or rehabilitate any purportedly mineralized area which is concealed by overburden or is otherwise difficult of access. Under proper circumstances, the testimony of the mineral examiner may establish a prima facie case of lack of discovery even though he was not physically on each mining claim.

United States v. Robert A. Bukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

When 33 percent of the available forage in a grazing allotment is on Federal land and the remainder is on private land, it is appropriate to find that 33 percent of the forage consumed by cattle throughout the allotment was Federal forage, in the absence of evidence to the contrary.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

Proposed testimony of a witness as to the procedures that would be followed by a person in private industry in making a complete evaluation of a mining claim is properly excluded as irrelevant because it does not have a logical relation to the type of an examination made by a Government mineral examiner to establish the facts on which the validity or invalidity of a mining claim may be determined.

Where a contestee fails to follow up his initial suggestion at the hearing that a deposition of a possible witness be taken with a proper request, it is not error for the administrative law judge to decide the case on the record made at the hearing.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

EVIDENCE--Continued

GENERALLY--Continued

Where the official record of an oil and gas lease offer contains no indication either of when BLM received payment of first-year rental on the lease or of when BLM believes it received this payment, and where the only indication of when the payment was made is a photocopy, submitted on appeal, of a portion of an unidentified, undated receipt which does not bear either the offeror's name or the serial number of his offer or the control number of the document, and which is not included in the official record, BLM's decision rejecting the offer under 43 CFR 3112.4-1 for failure to make this payment within 15 days of the offeror's receipt of notice that the rental was due will be reversed.

Willis L. Lawton, 36 IBLA 178 (July 31, 1978)

In a mining claim contest, no weight will be given to claimant's allegation that the Government's mineral examiner failed to sample the discovery point or the best mineral showings, where the claimant was invited to indicate his discovery to the examiner and failed to do so, and where he also failed to introduce convincing evidence of his own that a discovery had been made.

United States v. Larry Joseph Sims, 36 IBLA 316 (Aug. 23, 1978)

Where a corporate patent applicant can trace its ownership of the claim back through a series of conveyances to a mesne owner who had title to the claim quieted in her by the decree of a court of competent jurisdiction, there is no need to look behind the quiet title decree to an earlier break in the chain of title unless there is reason to believe that the interest which is unaccounted for was not disposed of by the litigation. However, a court decree which merely distributes the assets of a decedent's estate is not a "quiet title decree" in this context, and does not ordinarily foreclose the interests of third parties who hold the record title to mining claims.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 16, 1978)

Where the official record of an oil and gas lease contains nothing either showing that an oil and gas lease applicant's $10 filing fee was included in a check which was dishonored by the drawee bank, or rebutting the applicant's assertion that his filing fee was instead included in another check processed by BLM without incident, BLM's decision to cancel a lease issued pursuant to this offer because no filing fee was paid as required by 43 CFR 3103.2-1(a) will not be sustained for that reason.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer.

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Lee S. Bielski, 39 IBLA 211 (Feb. 8, 1979) 86 I.D. 80

EVIDENCE--Continued

GENERALLY--Continued

Where the evidence as to specific trespass indicates that of a number of cattle counted some were located on private intermingled land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

Where a Native allotment application is filed before the death of an applicant, proof of the applicant's use and occupancy, if otherwise timely, may be filed by the appropriate official of the Bureau of Indian Affairs pursuant to 43 CFR 2561.2(a) after the applicant's death. A decision rejecting the application because the proof was filed after the applicant's death must be set aside where the proof is not inconsistent with the application. Further proceedings must be served upon the heirs, known or unknown, by appropriate service, and also upon conflicting claimants, such as the State of Alaska.

Ernest L. Olson, Jr. (Deceased), 41 IBLA 179 (June 22, 1979)

Where legal conclusions are reached in an appellate decision upon undisputed facts, and there has been no proffer of further facts which could compel different legal conclusions, no useful purpose would be served for a hearing, and a request therefor is properly denied.

Floyd L. Anderson, Sr., 41 IBLA 280 (June 28, 1979) 86 I.D. 345

Peter Panruk, 43 IBLA 69 (Sept. 19, 1979)

Nicky Nickoli, 43 IBLA 296 (Oct. 17, 1979)

Where a protestant against the issuance of leases, for oil and gas presents evidence demonstrating the existence of a written partnership between joint offers, and the offerors have not complied with the regulations requiring certain showings of partnerships, the offers cannot be honored.

American Quasar Petroleum Co., 42 IBLA 243 (Aug. 22, 1979)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

United States v. Andy Syndbad, 42 IBLA 313 (Aug. 29, 1979)

EVIDENCE--Continued

GENERALLY--Continued

A Government mineral examiner in evaluating a mining claim is not required to perform discovery work, to explore or sample beyond a claimant's workings and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner. While it is true that under proper circumstances, the testimony of the mineral examiner may establish a prima facie case of lack of discovery even though he was not physically on each mining claim, in the case at bar we need not decide whether a prima facie case was made by contestant since the totality of the evidence establishes invalidity of the claims.

The Board properly adopts a decision of an administrative law judge holding mining claims null and void for lack of discovery of certain minerals, *i.e.*, gold, silver, iron, titanium, feldspar, mica, silica refractory clay, stoneware clay, refractory sand and glass, where nondiscovery is established by the totality of the evidence.

United States v. Jon Zimmers and Claire Kelly, 44 IBLA 142 (Nov. 30, 1979)

Ordinarily, the postmark on a letter will be assumed to indicate the date and place of mailing in the absence of evidence to the contrary. Reasonable diligence is found where a rental payment, due in Billings, Montana, on June 1, 1979, was actually mailed from Wilmington, Delaware, on May 29, 1979, despite the fact that the envelope containing such payment bears only a Billings, Montana, postmark of June 2, 1979.

Phyllis Lane Zehr, Alice M. Conte, 44 IBLA 261 (Dec. 19, 1979)

The decision of an administrative law judge will not be disturbed on appeal where the preponderance of the evidence supports the result he reached.

United States v. Knox-Arizona Corp., 44 IBLA 297 (Dec. 31, 1979)

ADMISSIBILITY

Where, in an effort to negotiate a compromise settlement of an alleged grazing trespass, a rancher concedes that the trespass occurred to the extent of a specific number of animal unit months of forage, but the proposed settlement is not consummated and the case goes to a hearing on its merits, evidence of the purported admissions made by the party during such negotiations must be excluded as not competent to show either the fact or the extent of the trespass alleged.

Cesar and Robert Siard, 26 IBLA 29 (July 8, 1976)

Where the testimony and conclusions of an expert witness are based on careful examination of a mining claim by appropriate scientific methods, they will be accepted into evidence and given appropriate weight regardless of the fact that the witness may not be registered within that particular State as an expert in his field.

Cabot Sedgwick et al. v. C. E. Parker, 27 IBLA 256 (Oct. 20, 1976)

EVIDENCE--Continued

ADMISSIBILITY--Continued

The testimony of a qualified geologist and professional mining evaluation engineer concerning the marketability of a deposit of sand and gravel at a particular time may be accorded substantial evidentiary weight under the standard in Verrue v. United States, 457 F.2d 1202 (9th Cir. 1972), if it is established that he was in the area at the time, had studied the local sand and gravel market and the factors which affected it, as well as the nature of the material and the methods and costs of removing, processing and marketing it.

United States v. J. R. Osborne et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Bakke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

Proposed testimony of a witness as to the procedures that would be followed by a person in private industry in making a complete evaluation of a mining claim is properly excluded as irrelevant because it does not have a logical relation to the type of an examination made by a Government mineral examiner to establish the facts on which the validity or invalidity of a mining claim may be determined.

Where a contestee fails to follow up his initial suggestion at the hearing that a deposition of a possible witness be taken with a proper request, it is not error for the administrative law judge to decide the case on the record made at the hearing.

United States (Contestant) v. Earl Prince and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

Evidence of the design and specifications in a subsequent contract over the same sand dunes involved in the instant appeal was not admissible and was properly excluded under Federal Rule of Evidence 407, when offered to prove design defects or feasibility of precautionary measures.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978) 85 I.D. 107

It was proper to deny mining claimants' request to redrill on mining claims after the land was withdrawn from mining where the work would be an effort to make a discovery of a valuable mineral deposit within the claim rather than simply a confirmation or corroboration of a discovery prior to the withdrawal.

United States v. William Levon Chappell et al., 42 IBLA 74 (Aug. 13, 1979)

EVIDENCE--Continued

ADMISSIBILITY--Continued

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give the appropriate weight according to the circumstances surrounding the specific report. However, it is not improper to exclude an assay report where neither the assayer nor the sample-taker testifies concerning its origins, and no other foundation is laid for its introduction.

United States v. John B. Hunt et al., 43 IBLA 363 (Oct. 29, 1979)

BURDEN OF PROOF

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant. However, if the Government in a mining contest fails to present a prima facie case and the contestees move to dismiss the case and rest, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

Where the Government has made a prima facie case of lack of discovery in a mining contest, any issue in doubt as to discovery raised by the evidence must be resolved against the party having the risk of nonpersuasion, the mining claimant. If a mining claimant fails to show by a preponderance of the evidence as to such issue that there has been a discovery of a valuable mineral deposit he has not satisfied his burden of proof and an administrative law judge must declare the claim invalid, rather than leave the question of the claim's validity unresolved.

In making a prima facie case in a mining contest involving a common variety of material, it is only essential for the Government to establish that the contestees had not prior to July 23, 1955, met the criteria used in determining marketability at a profit. It is not essential that the Government's evidence prove conclusively that the material could not, in fact, be marketed at a profit, but only that it was not sold or marketed. The Government is not required to do the discovery work upon a mining claim; it is only necessary that the exposed areas of a claim and the workings on a claim be examined to verify if a discovery has been made by the mining claimant.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

A determination by a district manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

John T. Furtha, 19 IBLA 97 (Mar. 4, 1975)

Raney Brothers, 24 IBLA 265 (Mar. 25, 1976)

The fact that much of the evidence that supports a mining claimant's position in a mining claim contest is presented by the Government, rather than the claimant, does not mean that the claimant's burden of proof has not been met, because the entire evidentiary record must be considered in weighing the evidence and not simply the claimant's evidence alone.

United States v. Kinsley Beach Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

In a mining contest a mining claimant is the true proponent under the Administrative Procedure Act, 5 U.S.C. § 556(d) (1970), of a rule or order that he has complied with the mining laws, and he has the ultimate burden of proof -- the risk of nonpersuasion -- to show by a preponderance of the evidence that there is a valuable mineral deposit on the claim, when the Government has made a prima facie case of lack of such a discovery.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

A protestant against the filing of a survey plat bears the burden of proof, *i.e.*, the risk of nonpersuasion, to show why the plat should not be accepted, and the applicant state has the burden of demonstrating that land is swamp and overflowed in character. The protestant against the filing of a survey plat who claims that title to the land passed to the state under the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), is properly assessed with the burden of proof, *i.e.*, the risk of nonpersuasion, in the proceeding.

In a hearing held to determine whether lands were swamp and overflowed at the time of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), the parties asserting the state's title fail to meet their burden of proof when the evidence submitted indicates that the mangrove area claimed as swampland is in fact below the line of mean high tide, and was properly delineated from the upland by the meander line.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

The successful drawee in a drawing under the special simultaneous filing procedure for noncompetitive oil and gas lease offers is automatically disqualified if he fails to pay rental within 15 days from receipt of notice that such payment is due. A statement by such a drawee that he did not receive a notice and that his office records where his oil and gas records are contained lack any copy of the rental notice is insufficient to overcome the presumptive effect of evidence that Bureau of Land Management officials mail copies of the notice of rental, a notice of stipulations to be signed, and the stipulations in the same envelope, and it is clear the envelope containing the stipulations was received at the drawee's office.

A. G. Golden, 22 IBLA 261 (Oct. 24, 1975)

In a mining contest, the mining claimant is the proponent of a rule or order that he has complied with the mining laws entitling him to validation of the claim, and the claimant has the ultimate burden of proof. The Government has assumed the burden of going forward with sufficient evidence to establish a prima facie case of invalidity. When this has been done, the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

Where the Government fails to present a prima facie case, a contestee, upon timely motion, may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record. Therefore, even if the Government has failed to make a satisfactory prima facie case, or the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderance of the evidence, bearing the risk of nonpersuasion if he fails.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

A lode mining claim for barite is properly declared null and void in the absence of a showing of a discovery on the claim of a deposit of barite which would warrant a prudent man in further expending his labor and means in the reasonable expectation of developing a valuable mine. Evidence of mineralization which may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

Once the Government has established in a mining claim contest a prima facie case that the claims are not valid for lack of discovery, the burden shifts to the contestee to prove the discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Howard S. McKenzie, 29 IBLA 270 (Mar. 28, 1977)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant, but if the Government in a contest fails to present a prima facie case and the contestee moves to dismiss the case and rests, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

Where the Government has made a prima facie case of lack of discovery in a mining contest, and a mining claimant fails to show discovery by a preponderance of the evidence, he has not satisfied his burden of proof and the claim must be declared invalid.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

United States v. Emma Elizabeth Conner, and Walter J. Nolte, as the Heirs of H. V. Sweet, a Last Known Director of the Arlington Gold Mining Co. (Consolidated), 31 IBLA 173 (July 5, 1977)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

The Goverment has the burden of proof that the contractor failed to deliver the goods. The contractor has the burden of proof that its failure was excusable. Where the only evidence of excusability was a letter from the contractor saying that it was delayed by delays in procurement of components and unexpectedly slower rates of system checkout and software debugging, the contractor has not carried its burden of proof of excusability and the appeal is denied.

Appeal of CSP, Inc., IBCA-1137-12-76 (Nov. 10, 1977) 84 I.D. 917

A Bureau of Land Management appraisal from which the annual rental for a special use permit is calculated will be upheld unless the permittee shows by substantial and positive evidence, specific errors in the method or facts on which the appraisal is based.

Michael S. Deering, 33 IBLA 142 (Dec. 19, 1977)

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

In a mining contest a contestee may rest at the close of the Government's case and move for a dismissal based on the Government's failure to make out a prima facie case of a claim's invalidity. If, however, the contestee goes forward and presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

Sec. 503 of the Federal Land Policy and Management Act of 1976 gives the Secretary discretionary authority with respect to issuance of rights-of-way. It would not be in public interest to grant appellant right-of-way because of inadequate water flow in Shoshone River and because of potential interference with planning for a modification of Buffalo Bill Dam. A decision by BLM, made in exercise of its discretion, to reject a water pipeline right-of-way application will be affirmed when the record shows the decision to be a reasoned analysis of factors involved made in due regard for public interest, and no sufficient reason to disturb decision is shown.

Broken H Ranch Co., 34 IBLA 182 (Mar. 21, 1978)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

Where, in a mining contest, a contestee presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

A mining claimant who is required by 43 CFR 3833.1-2(b), to file certificates of location with the Bureau of Land Management within 90 days of the date of location of his claims, has the burden of rebutting the presumption that Bureau officials properly discharged their official duties in receiving and date stamping all such certificates properly tendered to them. A mere assertion that Bureau officials did not properly discharge their duties fails to meet the claimant's burden of proof.

E. P. Morgan, 36 IBLA 379 (Aug. 31, 1978)

In mining claim contest, Government must only go forward with evidence to establish prima facie case of no discovery of valuable mineral deposits, and burden then shifts to mining claimant to prove by preponderance of evidence that his claim is valid.

Government has established prima facie case when its mineral examiner testifies that he has examined mining claims in issue and found mineral values insufficient to support finding of discovery of valuable deposits.

United States v. Michael D. Marica, 37 IBLA 68 (Sept. 18, 1978)

In a hearing held pursuant to the Administrative Procedure Act, evidence sufficient to support a decision must be reliable, probative, and substantial. 5 U.S.C. § 556(d) (1976).

Since a grazing trespass is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

A district manager's decision reached in the exercise of administrative discretion pursuant to the Taylor Grazing Act of 1934 may be regarded as arbitrary or capricious only where it is not supportable on any rational basis and the burden is on the appellant to show by substantial evidence that the decision is improper. A district manager's decision not to reissue a grazing lease for a certain area until that area is fenced and to reduce appellant's AUM's accordingly rests on a rational basis where the facts show that this unfenced area adjoins the bombing range and grazing thereon could result in trespass on the bombing range, inconsistent with the use of the range.

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

EVIDENCE--Continued

BURDEN OF PROOF--Continued

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

United States v. Ted G. Ax, 43 IBLA 146 (Sept. 28, 1979)

United States v. Ralph Page et al., 43 IBLA 390 (Oct. 31, 1979)

CREDIBILITY

A conjectural opinion on the possibility of a mining claimant's ability to market a common variety of gravel at a profit prior to July 23, 1955, is not credible evidence of marketability where specific evidence tends to show that development of a mining operation at that time was not then warranted by the marketplace conditions.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975)   82 I.D. 68

Under the Mining Claims Occupancy Act, 30 U.S.C. § 701 *et seq.* (1970), where the record includes a statement as to a principal place of residence which conflicts with a more detailed statement made under oath by the same person, the matter may be remanded for hearing in order to resolve the conflict and protect the rights of a third party.

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

While the existence of other land values does not qualify a locator's rights under the mining law if he has a valid claim, evidence of such other values may be considered in assessing the weight and credibility to be accorded the locator's testimony in determining whether a discovery has been made, and may be a factor in evaluating his bona fide intention to develop a mining operation.

United States v. J. R. Osborne et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

Where an application to acquire Federal land is rejected by BLM for the reason that the applicant's own declaration of material facts stated in his application demonstrate conclusively that he is not entitled to the land as a matter of law, an effort on appeal to revise, amend, or deny the facts will not be considered absent a persuasive explanation of error in the application.

Andrew Petla, 43 IBLA 186 (Oct. 5, 1979)

CREDIBILITY OF WITNESSES

It is the responsibility of a mining claimant to present evidence supporting his allegation of bias on the part of Government mineral examiners testifying as to the validity of his claim in a contest proceeding, and a showing of Department affiliation does not discredit a witness.

United States v. J. D. Wilson, 44 IBLA 1 (Nov. 6, 1979)

EVIDENCE--Continued

CREDIBILITY OF WITNESSES--Continued

Common-law marriage is not established where one claiming to be the common-law wife of decedent testifies she cannot recall the time the alleged marriage occurred, and where her claim is not supported by a preponderance of other credible evidence, showing public assumption of the marriage relationship.

Estate of Edward Lockwood, Jr., 7 IBIA 271 (Nov. 20, 1979)

HEARSAY

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Bukke (Registered Agent), Valmines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give the appropriate weight according to the circumstances surrounding the specific report. However, it is not improper to exclude an assay report where neither the assayer nor the sample-taker testifies concerning its origins, and no other foundation is laid for its introduction.

United States v. John R. Burt et al., 43 IBLA 363 (Oct. 29, 1979)

OFFICIAL NOTICE

Following a hearing under 43 CFR 2802.1-7, a decision increasing the charges for use and occupancy of a communication site is in error to the extent that the decision is based upon unspecified evidence not in the record and not made known to the user, and the decision must be set aside.

American Telephone and Telegraph Co. et al., 25 IBLA 341 (June 30, 1976)

The Board of Land Appeals may take official notice of the approved plats of official surveys.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

PREPONDERANCE

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to such location, the Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Where the expert witnesses called by the Government testify that prior to July 23, 1955, there was no profitable market for common variety minerals from the subject claims and that it would have been economic folly

EVIDENCE--Continued

PREPONDERANCE--Continued

to undertake the development a mine thereon, a prima facie case of invalidity has been made. Thereafter, upon the failure of the claimant to prove the contrary by a preponderance of credible evidence, a determination that the claims are invalid is obligatory.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

PRESUMPTIONS

One challenging the accuracy of an appraisal of water based on fair market value must show by substantial evidence the nature of the alleged error; where the appraisal has been conducted in accordance with generally accepted appraisal principles, allegations of error unsupported by evidence will be given little weight.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977)
84 I.D. 87

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to contrary, it will be presumed that they have properly discharged their official duties.

David F. Owen, 31 IBLA 24 (June 20, 1977)

Where a regulation requires that an acquired lands oil and gas lease offer be accompanied by a separate statement as to the offeror's ownership of operating rights to the fractional mineral interest not owned by the United States, and the offer is rejected for noncompliance therewith, the offeror's bald assertion that he filed such statement is insufficient to prove such a fact without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

W. J. Langley, 32 IBLA 118 (Sept. 12, 1977)

In the absence of any evidence to the contrary, the validity of the dates, on which a lease was signed and became effective, appearing on the face of a lease included in the record will be presumed.

Arjay Oil Co., 33 IBLA 102 (Dec. 16, 1977)

In a Government contest, regular service of the complaint must be presumed, where no question is raised as to the validity of certified mail return receipts included in the record, regular on their face and indicating proper service.

United States v. Ronda Wiece and Leslie Wiece, 33 IBLA 290 (Jan. 10, 1978)

EVIDENCE--Continued

PRESUMPTIONS--Continued

Where BLM records show that the first-drawn applicant for an oil and gas lease paid his rental 1 day late, and is therefore disqualified, there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Where a first-drawn oil and gas applicant offers evidence to show that his first year's advance rental was mailed sufficiently in advance so that, even if delayed, it would have arrived within the prescribed time, a legal presumption is raised that the payment was timely delivered.

Where the evidence in an administrative appeal raises countervailing legal presumptions of equal probative worth, a factfinding hearing may be ordered pursuant to 43 CFR 4.415.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

Where BLM rejected appellant's offer for oil and gas lease because it failed to receive from him fractional interest statement required by 43 CFR 3130.4-4 (1975), and evidence affidavits by appellant and his wife were filed on appeal reciting that he mailed such statement with his entry card for simultaneous drawing, the presumption of administrative regularity obtains and appellant must be deemed to have not borne his risk of nonpersuasion.

Charles J. Babington, 36 IBLA 107 (July 14, 1978)

A mining claimant who is required by 43 CFR 3833.1-2(b), to file certificates of location with the Bureau of Land Management within 90 days of the date of location of his claims, has the burden of rebutting the presumption that Bureau officials properly discharged their official duties in receiving and date stamping all such certificates properly tendered to them. A mere assertion that Bureau officials did not properly discharge their duties fails to meet the claimant's burden of proof.

E. M. Koppen, 36 IBLA 379 (Aug. 31, 1978)

The issuance of a patent creates a presumption that all requisite steps and requirements of law and Departmental regulations have been satisfied.

Even if there were a mistake in the issuance of a patent, such mistake would justify this Department in recommending to the Attorney General that suit be commenced to cancel the patent only where: (1) the Government has an interest in the remedy by reason of its interest in the land; (2) the interest of some party to whom the Government is under obligation has suffered by reason of the patent; (3) the duty of the Government to the people so requires or (4) significant equitable considerations are involved.

Where more than 6 years have passed after the issuance of a patent, suit by the United States to vacate and annul the patent cannot be sustained, 43 U.S.C. § 1166 (1970), absent a positive showing of fraud practiced upon the United States.

H. E. Baldwin, 37 IBLA 215 (Oct. 12, 1978)

EVIDENCE--Continued

PRESUMPTIONS--Continued

Although in certain circumstances a rebutable presumption of a mining claim's validity may be indulged, the presumption does not arise to support an application for patent of the fee title. The patent applicant is the movant party, and as such it is his obligation to make a satisfactory showing of his entitlement under the law and regulations.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Phillips Petroleum Co., 38 IBLA 344 (Dec. 22, 1978)

Delay caused by or attributable to the U.S. Postal Service is not sufficient to excuse late payment of rental except where reinstatement of a lease is at issue under 30 U.S.C. § 188(c) (1976). When BLM returns unacceptable payment to the offeror, a charge that delay in the return of the payment by the Postal Service caused his or her subsequent late rental payment is also an insufficient excuse absent evidence that the Postal Service acted improperly. There is a legal presumption of regularity which supports the official acts of public officers, and in the absence of clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Gary Milske, 44 IBLA 21 (Nov. 6, 1979)

PRIMA FACIE CASE

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to such location, the Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Where the expert witnesses called by the Government testify that prior to July 23, 1955, there was no profitable market for common variety minerals from the subject claims and that it would have been economic folly to undertake the development a mine thereon, a prima facie case of invalidity has been made. Thereafter, upon the failure of the claimant to prove the contrary by a preponderance of credible evidence, a determination that the claims are invalid is obligatory.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

Pursuant to the provision of 63 Oklahoma Statute 1-324, a birth certificate is prima facie evidence of the facts therein stated and unless rebutted is sufficient in and of itself.

Estate of Roland Loyd (Mokeadlemah) Botone, 7 IBIA 177 (Aug. 16, 1979)

STIPULATIONS

Upon a showing of probable error in prior order, a reopening pursuant to 43 CFR 206 and 4.242(a) is required. Where nationality of heirs was found to be relevant to the final order of distribution it was error to rely upon an agreed statement which was in conflict with evidence previously admitted to establish nationality.

Where a stipulation is used to establish material facts tending to prove nationality, and where nationality of heirs is a material issue in the probate proceedings, the administrative law judge must, pursuant to 43 CFR 4.232(c), determine that all parties and their attorneys understand the stipulation and its effect, and that all consent to the use of the stipulation as evidence to prove the agreed facts.

Where the record fails to establish the consent of all the parties to a stipulation of fact, the parties may be relieved from the stipulation in the interests of justice.

A stipulation is not binding upon the parties where the stipulation offered to establish facts concerning nationality contains an erroneous conclusion of law.

Estate of San Pierre Kilkakhan (Sam E. Hill), 7 IBIA 240 (Oct. 23, 1979)

SUFFICIENCY

Where, at the hearing of a mining claim contest, the transcript of a previous hearing in another related contest is received in evidence, those portions of the transcript which are relevant and material to the case at hand may form, or contribute to, the basis for the decision in the case, regardless of which party introduced the transcript in evidence.

Material which is principally valuable for use as fill, sub-base or ballast, for which ordinary earth or rock may be used, is not locatable under the mining laws, and even if the material is suitable for other purposes, its value for the above uses cannot be considered in determining its marketability as a valuable mineral deposit within the ambit of the general mining law.

In a contest of a mining claim located for common variety mineral materials prior to July 23, 1955, after which such locations were proscribed by law, where there has been no mining and no sales, the test of the validity of the claim is whether the claimant(s) could have mined and marketed the material profitably prior to that date and thereafter. The evidence tending to so show must relate to what a prudent man would have been reasonably justified in doing based upon the actual known circumstances at the time, not upon what he might have done if the proper conditions had then prevailed.

United States v. J. R. Osborne et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

EVIDENCE--Continued

SUFFICIENCY--Continued

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to contrary, it will be presumed that they have properly discharged their official duties.

David F. Owen, 31 IBLA 24 (June 20, 1977)

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of fact is not required to believe or give any weight to testimony which is inherently incredible.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

Ordinarily the postmark date on a letter will be deemed the date of mailing. This inference may be rebutted on showing satisfactory, circumstantial evidence to lend credibility to an earlier date. A letter from postal authorities, acknowledging that a posted pickup schedule erroneously indicated pickups on Sundays and holidays, especially where the letter is accompanied by a photograph of the posted schedule, sufficiently corroborates lessee's contention that he mailed the rental payment prior to a Sunday and Monday holiday to rebut the inference resulting from a postmark of the following Tuesday.

Edward Malz, 33 IBLA 22 (Nov. 22, 1977)

Evidence that Forest Service land has been appraised at lower values and leased at lower rates than allegedly comparable Bureau of Land Management land will not suffice to overturn the latter's practices where no specific error in its methods has been shown.

Where a permittee introduces an alternative comparative sales analysis in opposition to that of the Bureau of Land Management, he must show by substantial and positive evidence why his analysis is valid and the Bureau of Land Management's invalid. Where the issue rests on the assertion of each party's expert on the validity of his respective analysis and the record fails to contain evidence by which this deadlock can be resolved, the case will be remanded for further factfinding.

Michael S. Deering, 33 IBLA 142 (Dec. 19, 1977)

EVIDENCE--Continued

SUFFICIENCY--Continued

An assertion by an alleged trespasser that he holds the right to graze and enclose Federal range must be documented to rebut the Government's prima facie case of trespass.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

Where land on which a valid settlement has been made and maintained according to the law under which it was made, was excepted from the effect of the withdrawal or reservation, occupancy of the land prior to reservation or withdrawal is insufficient to show exception where no filing has been made on the prior occupancy and the prior occupancy was not for homestead purposes.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

Where BLM rejected appellant's offer for oil and gas lease because it failed to receive from him fractional interest statement required by 43 CFR 3130.4-4 (1975), and evidence affidavits by appellant and his wife were filed on appeal reciting that he mailed such statement with his entry card for simultaneous drawing, the presumption of administrative regularity obtains and appellant must be deemed to have not borne his risk of nonpersuasion.

Charles J. Babington, 36 IBLA 107 (July 14, 1978)

In a hearing held pursuant to the Administrative Procedure Act, evidence sufficient to support a decision must be reliable, probative, and substantial. 5 U.S.C. § 556(d) (1976).

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

When on appeal a sufficient showing is made to call into question a determination that land lies within a known geologic structure of a producing oil or gas field, and a hearing is requested, the decision may be set aside and remanded for hearing.

Jack J. Bender, 40 IBLA 26 (Mar. 9, 1979)

Where, on appeal, a mining claimant alleges that he timely mailed the affidavits of assessment work to the proper BLM office but there is no evidence to indicate they were ever received, the claimant must bear the consequences of the loss and his inability to prove his allegation that they may have been received by the Bureau and subsequently lost.

Amanda Mining & Manufacturing Ass'n., 42 IBLA 144 (Aug. 16, 1979)

Roger Kuhn, 43 IBLA 182 (Sept. 28, 1979)

EVIDENCE--Continued

SUFFICIENCY--Continued

Decisions by BLM declaring mining claims abandoned and void for failure to file timely annual notices of intention to hold the claims or affidavits of assessment work will be vacated, notwithstanding the fact that BLM's records contain no such documents marked as timely filed, where the claimant is able to show that he mailed such documents to BLM and that it received them timely, and where it does not appear unlikely that BLM misplaced the documents or misconstrued their contents, owing to the absence of a numbering system and the similarity of the names of the claims to others.

E. Joe Swisher, 44 IBLA 44 (Nov. 19, 1979)

WEIGHT

Where the testimony and conclusions of an expert witness are based on careful examination of a mining claim by appropriate scientific methods, they will be accepted into evidence and given appropriate weight regardless of the fact that the witness may not be registered within that particular State as an expert in his field.

Cabot Sedgwick et al. v. C. M. Parker, 27 IBLA 256 (Oct. 20, 1976)

Where, at the hearing of a mining claim contest, the transcript of a previous hearing in another related contest is received in evidence, those portions of the transcript which are relevant and material to the case at hand may form, or contribute to, the basis for the decision in the case, regardless of which party introduced the transcript in evidence.

The testimony of a qualified geologist and professional mining evaluation engineer concerning the marketability of a deposit of sand and gravel at a particular time may be accorded substantial evidentiary weight under the standard in *Verrue* v. *United States*, 457 F.2d 1202 (9th Cir. 1972), if it is established that he was in the area at the time, had studied the local sand and gravel market and the factors which affected it, as well as the nature of the material and the methods and costs of removing, processing and marketing it.

In a contest of a mining claim located for common variety mineral materials prior to July 23, 1955, after which such locations were proscribed by law, where there has been no mining and no sales, the test of the validity of the claim is whether the claimant(s) could have mined and marketed the material profitably prior to that date and thereafter. The evidence tending to so show must relate to what a prudent man would have been reasonably justified in doing based upon the actual known circumstances at the time, not upon what he might have done if the proper conditions had then prevailed.

While the existence of other land values does not qualify a locator's rights under the mining law if he has a valid claim, evidence of such other values may be considered in assessing the weight and credibility to be accorded the locator's testimony in determining whether a discovery has been made, and may be a factor in evaluating his bona fide intention to develop a mining operation.

United States v. J. R. Osborne et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

EVIDENCE--Continued

WEIGHT--Continued

Past evidence of successful mining activity has limited probative value in determining whether there is a present discovery of a valuable mineral deposit on a mining claim, and assay reports can be given little weight when they are not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed in taking the sample.

United States v. Lee Nicholson et al., 31 IBLA 224 (July 7, 1977)

Assay reports have limited probative value as to the existence of a valuable mineral deposit on a mining claim when they are not supported by evidence as to how and where the samples were taken.

United States v. John S. Porter, 37 IBLA 312 (Oct. 25, 1978)

United States v. John R. Burt et al., 43 IBLA 363 (Oct. 29, 1979)

EXCHANGES OF LAND
(*See also* Indian Lands, Private Exchanges, State Exchanges, Wildlife Refuges and Projects--if included in this Index.)

GENERALLY

The appraised values of offered and selected lands in a land exchange application made pursuant to the Federal Land Policy and Management Act of 1976 are properly determined where such values are set in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions.

Paul Kellerblock, 38 IBLA 160 (Dec. 5, 1978)

The Act of Mar. 20, 1922, authorized exchanges for the purpose of consolidating national forest lands, if two criteria were satisfied: (1) the public interest would be benefited thereby; and (2) the proffered lands were chiefly valuable for national forest purposes.

Petro Leasco, Inc., 42 IBLA 345 (Aug. 31, 1979)

Where private land exchange was for surface rights only and applicant's warranty deed mistakenly conveys a fee simple absolute, the facts concerning which are well-documented, on equitable principles an applicant may be entitled to issuance of a disclaimer of interest in the mineral estate. 43 U.S.C. § 1745 (1976).

Dennis Potts, 42 IBLA 355 (Sept. 11, 1979)

FOREST EXCHANGES

An application for satisfaction of forest lieu selection rights filed after Dec. 31, 1969, will be rejected, as all such claims which had not been satisfied on that date, or for which no satisfaction had been demanded, expired by operation of law.

A forest lieu selection right is extinguished when the base lands are reconveyed by the United States to the principal (the party who originally conveyed the land to the United States). The purported agent or attorney-in-fact of the principal has no rights thereafter against

EXCHANGES OF LAND--Continued

FOREST EXCHANGES--Continued

the United States even if he recorded his power of attorney and other selection documents prior to the reconveyance.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

The Act of Mar. 20, 1922, authorized exchanges for the purpose of consolidating national forest lands, if two criteria were satisfied: (1) the public interest would be benefited thereby; and (2) the proffered lands were chiefly valuable for national forest purposes.

Petro Leasco, Inc., 42 IBLA 345 (Aug. 31, 1979)

EXECUTIVE ORDERS AND PROCLAMATIONS

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

GENERALLY

In an underground coal mine owned and operated by two partners who are also the only miners in such mine, there being no employees, such owner-operators and the mine are, nevertheless, subject to the provisions of the Act, where the coal extracted from such mine enters commerce by being transported interstate.

Charles T. Sink, 5 IBMA 217 (Oct. 31, 1975) 82 I.D. 535

ABATEMENT

Withdrawal Orders

When an inspector finds that an operator has failed to abate a violation within the time originally fixed in a sec. 104(b) notice, he abuses his enforcement discretion by issuing a withdrawal order if, in the circumstances, the time for abatement should be further extended. 30 U.S.C. § 814(b) (1970).

Old Ben Coal Co., 6 IBMA 294 (Sept. 16, 1976) 83 I.D. 335

ADMINISTRATIVE PROCEDURE

Appeals

In the absence of a showing of good cause and the presence of objection by an opposing party, the Interior Board of Mine Operations Appeals will not grant an appellant leave to amend its brief on appeal so as to recast existing arguments or to raise new issues.

In the Matter of Old Ben Coal Co. (No. 24 Mine), 5 IBMA 211 (Oct. 20, 1975) 82 I.D. 525

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

ADMINISTRATIVE PROCEDURE--Continued

Appeals--Continued

In a civil penalty proceeding, where an administrative law judge applies an amended version of a mandatory standard alleged to have been violated in lieu of the version in effect at the time the citation was issued, he errs, and where he has made all of the basic findings necessary to apply the correct version of the pertinent mandatory standard to the facts, the Board may so apply the correct standard in the interests of saving time and expense, rather than remanding. 30 U.S.C. § 819 (1970); 43 CFR 4.603, 4.605, 4.505(b).

Lone Star Steel Co., 7 IBMA 257 (Mar. 15, 1977) 84 I.D. 103

Dismissals

Where it does not appear from the pleadings that the party charged by the Mining Enforcement and Safety Administration is a proper party to a penalty proceeding, the action is properly dismissed.

Ohio Mining Co., 4 IBMA 121 (Apr. 17, 1975) 82 I.D. 167

Defaults

Generally

Under 43 CFR 4.544, an administrative law judge abuses his discretion in denying a motion to enter a default for failure to file an answer where the sole excuse for such failure is the Respondent's voluntary refusal to assign personnel or hire an attorney to perform that task.

Karst-Robbins Coal Co., Inc., 6 IBMA 78 (Mar. 22, 1976) 83 I.D. 88

Affirmative Defenses

In a default proceeding, an administrative law judge errs by sua sponte raising an affirmative defense. 43 CFR 4.582.

P & P Coal Co., 6 IBMA 86 (Mar. 22, 1976) 83 I.D. 91

Hearings

Amendments to Pleadings

The Interior Board of Mine Operations Appeals will not overturn a procedural ruling by an administrative law judge disallowing an amendment to a pleading unless the record manifests an abuse of discretion by showing such ruling to have a clear prejudicial effect upon the objecting party.

Gay Coal, Inc., 7 IBMA 245 (Mar. 10, 1977) 84 I.D. 99

Parties

Where an operator filed legal identity reports under two different corporate names without noting the change, and where, in a proceeding to assess a civil penalty, the notices of violation and the petition for assessment use only one of the names, there is no basis for dismissal for failure to serve and join the corporate

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

ADMINISTRATIVE PROCEDURE--Continued

Parties--Continued

alias if the respondent in fact has defended throughout the administrative proceeding.

Harlan No. 4 Coal Co., 4 IBMA 241 (June 6, 1975) 82 I.D. 284

Reconsideration

Where an initial decision has been issued and a notice of appeal has been filed with the Board of Mine Operations Appeals, an administrative law judge is precluded by 43 CFR 4.582(c) from granting a subsequently filed motion for reconsideration, there being no jurisdiction.

In the Matter of Old Ben Coal Co. (No. 24 Mine), 6 IBMA 138 (May 6, 1976) 83 I.D. 207

Rulemaking

The "approval" function of the Secretary with respect to roof control plans, exercised at the enforcement level by a MESA district manager under 30 CFR 75.200-4, is not subject to the rulemaking provisions of secs. 101 and 301(d) of the Act. 30 U.S.C. §§ 811, 861(d) (1970).

Bishop Coal Co., 5 IBMA 231 (Nov. 18, 1975) 82 I.D. 553

APPEALS

Generally

Where a party fails to raise an issue in prehearing pleadings, or at the hearing, it is precluded from doing so before the Board unless such issue involves jurisdiction or mootness.

Clinchfield Coal Co., 6 IBMA 319 (Sept. 27, 1976) 83 I.D. 350

The filing of a timely notice of appeal stays the effect of an initial decision by an administrative law judge by operation of law, preventing it from becoming final, but such a stay is not a restraint on further enforcement action by MESA based upon the notice of violation or order of withdrawal under review. 43 CFR 4.594.

Old Ben Coal Co., 7 IBMA 272 (Mar. 30, 1977) 84 I.D. 124

Penalties

Where the record shows that the administrative law judge has taken into consideration all relevant mitigating factors supported by the evidence, and has fixed the amount of the penalty accordingly, in the absence of a showing of an abuse of discretion on his part, the Board on appeal will not further modify the penalty assessed.

Peabody Coal Co., 7 IBMA 318 (May 20, 1977) 84 I.D. 202

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

APPLICATIONS FOR REVIEW

Generally

An administrative law judge is limited to deciding those issues actually presented in an Application for Review and is not authorized to raise any other substantive question sua sponte unless it pertains to jurisdiction.

Eastern Associated Coal Corp., 4 IBMA 1 (Jan. 22, 1975) 82 I.D. 22

Investigations

In the circumstances of a given case, an administrative law judge may properly rule that a hearing, by itself, is sufficient to satisfy the requirement of sec. 105 of the Act that the Secretary shall cause an investigation to be made as he deems appropriate.

American Coal Co., 8 IBMA 64 (July 14, 1977) 84 I.D. 394

Issues

An administrative law judge may not decide an issue not properly raised in an Application for Review nor agreed upon by the parties unless it pertains to jurisdiction.

Kanawha Coal Co., 7 IBMA 158 (Dec. 21, 1976) 83 I.D. 704

Pleading

Where an applicant has filed an application for review containing an incomplete request for relief, but later makes clear all the specifics of the relief desired *without objection*, a responding party shall be deemed on appeal to have waived any claim of error below based upon an administrative law judge's decision to grant the portion of the relief ultimately requested but not mentioned in such application. 43 CFR 4.532(a)(1).

Old Ben Coal Co., 6 IBMA 294 (Sept. 16, 1976) 83 I.D. 335

BURDEN OF PROOF

The Secretary's burden of proof regulation, 43 CFR 4.587, does not govern the order of proof or the obligation to establish a prima facie case. Such regulation applies only to the determination of which party loses in whole or in part, as appropriate, where the evidence is in equipoise with respect to an element or elements of proof in dispute.

Zeigler Coal Co., 4 IBMA 88 (Mar. 31, 1975) 82 I.D. 111

CLOSURE ORDERS

Generally

An Order of Withdrawal will be vacated where it is served upon a person who is neither responsible for the violation or condition alleged nor for the safety of the miners involved.

United States Steel Corp., 4 IBMA 175 (May 19, 1975) 82 I.D. 246

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

CLOSURE ORDERS--Continued

Generally--Continued

Vacation or termination of a sec. 104(a) order of withdrawal by MESA does not preclude review of such order where timely application therefor is made pursuant to sec. 105 of the Act.

Eastern Associated Coal Corp., 4 IBMA 298 (June 27, 1975)
82 I.D. 311

In an application for review of an imminent danger withdrawal order where the alleged imminently dangerous conditions relate to roof conditions, there is no guarantee from the face of a modification order issued by a different inspector 36 hours after the issuance of the original order that the conditions described in the modification existed at the time of the issuance of the original order.

A modification order issued 36 hours after issuance of an imminent danger order while allegedly curing defects in the description in the original order of conditions or practices, did not satisfy the requirement of promptness of notification implicit in the mandate of sec. 107 of the Act.

Armco Steel Corp. (On Reconsideration), 8 IBMA 245 (Feb. 13, 1978)
85 I.D. 36

Imminent Danger

Extensive accumulations of loose coal, coal dust, and float coal dust in the presence of potential sources of ignition will support a finding of imminent danger.

Old Ben Coal Co., 4 IBMA 198 (June 6, 1975) 82 I.D. 264

Extensive accumulations of loose coal and coal dust in the presence of a damaged trailing cable will support a finding of imminent danger.

Old Ben Coal Co., 4 IBMA 224 (June 6, 1975) 82 I.D. 277

In an application for review of a sec. 104(a) order, the order is properly vacated where the conditions cited therein constitute violations of the operator's roof control plan, but fail to show the roof to be unsafe or inadequately supported.

Zeigler Coal Co., 5 IBMA 132 (Sept. 19, 1975)
82 I.D. 441

DISCRIMINATION

Filing Period

The 30-day period in sec. 110(b)(2) of the Act for the filing of an application for review of alleged discriminatory conduct is a statute of limitations and is therefore an affirmative defense which is waived if not timely raised. 30 U.S.C. § 820(b)(2) (1970).

Phil Baker v. The North American Coal Co., 8 IBMA 164 (Sept. 30, 1977)
84 I.D. 877

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

DISCRIMINATION--Continued

Intention

Any miner seeking relief from alleged discriminatory conduct in retaliation for a safety complaint who has not directly reported to the Secretary or his authorized representative must show that it was his intention to contact the Federal authorities before the protection of the Act is invoked.

Phil Baker v. The North American Coal Co., 8 IBMA 164 (Sept. 30, 1977)
84 I.D. 877

Scope of Review

A finding that an operator violated mandatory safety standards is irrelevant in a proceeding brought by a miner pursuant to sec. 110(b)(1) of the Act. 30 U.S.C. § 820(b)(1) (1970).

Phil Baker v. The North American Coal Co., 8 IBMA 164 (Sept. 30, 1977)
84 I.D. 877

ENTITLEMENT OF MINERS

Generally

Responsibility for the enforcement of sec. 203(b)(3) is vested in the Secretary of the Interior. 30 U.S.C. § 843(b)(3) (1970).

Pocahontas Fuel Co., 7 IBMA 121 (Dec. 20, 1976)
83 I.D. 650

Compensation

Generally

A claim for compensation under sec. 110(a) at the rate allowable for withdrawal orders issued for an unwarrantable failure to comply with a mandatory standard is not sustainable where such claim is predicated upon an imminent danger withdrawal order issued under sec. 104(a) of the Act.

Billy F. Hatfield et al. v. Southern Ohio Coal Co., 4 IBMA 259 (June 25, 1975)
82 I.D. 289

A shift for the purposes of sec. 110(a) of the Act begins at that time when payment begins and terminates when payment terminates. If a sec. 104(a) or 104(b) order of withdrawal is issued between shifts and it has not been terminated, the miners idled thereby in the following shift are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than 4 hours of such shift.

Island Creek Coal Co., 5 IBMA 276 (Dec. 3, 1975)
82 I.D. 598

Miners are entitled to compensation under sec. 110(a) of the Act when secs. 103(f) and 104(c) withdrawal orders are in effect concurrently even if the 103(f) order was issued first. Such compensation, however, is computed with reference only to the duration of the sec. 104(c) orders.

Roscoe Page et al. v. Valley Camp Coal Co., 6 IBMA 1 (Jan. 28, 1976)
83 I.D. 28

ENTITLEMENT OF MINERS--Continued

Compensation--Continued

Generally--Continued

The phrase "regular rate of pay," as used in sec. 203(b)(3), means the rate of compensation due a miner under his job classification under the current wage agreement.

Pocahontas Fuel Co., 7 IBMA 121 (Dec. 20, 1976)
83 I.D. 690

A claim for compensation under sec. 110(a) for miners idled by a withdrawal order issued under sec. 104(a) of the Act is sustainable only as to those miners specifically withdrawn from the mine or an area of the mine by the terms of the withdrawal order as issued.

A claim for compensation under sec. 110(a) at the rate allowable for withdrawal orders issued for an unwarrantable failure to comply with a mandatory standard is not sustainable where such claim is predicated upon an imminent danger withdrawal order issued under sec. 104(a) of the Act.

United Mine Workers of America (Local Union No. 1993) v. Consolidation Coal Co., 8 IBMA 1 (June 3, 1977)
84 I.D. 254

Dismissal

An application for compensation filed under sec. 110(a) of the Act may not be dismissed pursuant to motion in the prehearing stage if it states any claim upon which relief may be granted.

Billy F. Hatfield et al. v. Southern Ohio Coal Co., 4 IBMA 259 (June 25, 1975)
82 I.D. 289

Discharge

Generally

In order to conclude that a discharge occurs "by reason of the fact that" a miner has engaged in protected reporting activities, an administrative law judge must find that such discharge would not have occurred but for such activities. 30 U.S.C. § 820(b)(1)(A) (1970).

Steve Shapiro v. Bishop Coal Co., 6 IBMA 28 (Mar. 2, 1976)
83 I.D. 59

Legitimate Causes

Where an operator asserts and establishes a legitimate cause for discharge the applicant for review must show by affirmative and persuasive evidence that the invocation of such cause was a pretext for an unlawful motive in order to show a violation of sec. 110(b)(1). 30 U.S.C. § 820(b)(1) (1970).

Steve Shapiro v. Bishop Coal Co., 6 IBMA 28 (Mar. 2, 1976)
83 I.D. 59

ENTITLEMENT OF MINERS--Continued

Discrimination

Hearings

Pleading

Where an applicant for review seeks relief only for an allegedly discriminatory discharge, an allegation to the effect that an act which preceded such discharge was discriminatory states a conclusion of law which is mere surplusage. 30 U.S.C. § 820(b)(2) (1970). 43 CFR 4.562(d).

Steve Shapiro v. Bishop Coal Co., 6 IBMA 28 (Mar. 2, 1976)
83 I.D. 59

Good Faith

Any miner seeking relief from an allegedly discriminatory discharge or refusal to rehire in retaliation for a safety complaint to the Secretary or his authorized representative and a refusal to work must show as part of his prima facie case that his complaint was based upon a good faith belief that there was a dangerous condition or practice.

Glenn Munsey v. Smitty Baker Coal Co., Inc., Ralph Baker, Smitty Baker, and R & E Coal Co., 8 IBMA 43 (June 30, 1977)
84 I.D. 336

EVIDENCE

Adverse Witnesses

In a civil penalty proceeding brought pursuant to sec. 109(a)(3) of the Act, it is entirely proper for the Mining Enforcement and Safety Administration to call to the stand and examine the adverse party's principal witness and to rely upon such testimony in an effort to make out a prima facie case.

Karst-Robbins Coal Co., Inc., 6 IBMA 78 (Mar. 22, 1976)
83 I.D. 88

Credibility of Testimony

Where substantial evidence of record corroborates the finding of the trial judge that the testimony of the witness for one party is more credible than testimony of the witnesses for another party, the Board, on appeal, will not disturb such finding of credibility.

Mountaineer Coal Co., 6 IBMA 308 (Sept. 24, 1976)
83 I.D. 341

Credibility of Witnesses

In the absence of a clear and convincing showing of prejudicial error, a judge's findings as to witnesses' credibility will not be disturbed on appeal.

Old Ben Coal Co., 8 IBMA 19 (June 28, 1977)
84 I.D. 332

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

EVIDENCE--Continued

Photographs

Probative Weight

Where photographs are introduced in evidence, particularly for the purpose of showing shade and color, and the party introducing such evidence fails to establish the accuracy thereof in terms of being true representations of the shade and color of the subject of such photographs, it is proper for the trier of fact to give no probative weight to such evidence.

Mountaineer Coal Co., 6 IBMA 308 (Sept. 24, 1976) 83 I.D. 341

Preponderance

Where the only evidence offered to prove a violation of 30 CFR 75.507 was the credible opinion of the inspector which was offset by the credible opinion of the operator's witness of equal expertise, the Board will not overturn the administrative law judge's determination that the fact of violation was not established by a preponderance of the evidence. 43 CFR 4.587.

Rushton Mining Co., 5 IBMA 170 (Sept. 26, 1975) 82 I.D. 457

Prima Facie Case

Withdrawal orders and assessments of civil penalties are "sanctions" within the meaning of sec. 7(d) of the Administrative Procedure Act, 5 U.S.C. § 556(d) (1970), and may be imposed only if the Government produces reliable, probative, and substantial evidence, that is to say, establishes a prima facie case.

Zeigler Coal Co., 4 IBMA 88 (Mar. 31, 1975) 82 I.D. 111

The mere showing by MESA that a methane monitor was not set to indicate a true reading does not in itself prove a prima facie violation under 30 CFR 75.313 in that the terms "operative" and "properly maintained" refer to the functional properties of the monitor and not its calibration which is encompassed within the term "frequently tested."

Mid-Continent Coal and Coke Co., 8 IBMA 204 (Nov. 10, 1977) 84 I.D. 919

Relevancy

Where an administrative law judge refuses to accord probative value to certain admitted evidence on the ground that such evidence is irrelevant, he errs when his conclusion of irrelevancy is based upon mere presumption and surmise without evidentiary foundation.

Mary E. Coal Co., Inc., 7 IBMA 98 (Nov. 24, 1976) 83 I.D. 579

Sufficiency

Where the evidence fails to show the composition of an accumulation of materials to be loose coal, coal dust, or other combustible matter and does show that the accumulated materials were soft and ranged from damp to wet, there is no basis upon which to conclude that a violation of 30 U.S.C. § 864(a) (1970) has occurred.

Bishop Coal Co., 4 IBMA 52 (Mar. 14, 1975) 82 I.D. 89

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

EVIDENCE--Continued

Sufficiency--Continued

A violation of sec. 304(a) of the Act is not established where neither the notice, order, nor the evidence at hearing shows the nature and extent of the accumulation of loose coal, coal dust, or float coal dust.

Itmann Coal Co., 4 IBMA 61 (Mar. 18, 1975) 82 I.D. 96

HEARINGS

Generally

It is error for an administrative law judge to render a decision on the merits in a review proceeding where a hearing on the merits is neither held nor waived by the parties.

Perry-Ross Coal Co., 5 IBMA 5 (July 25, 1975) 82 I.D. 345

Abuse of Discretion

An administrative law judge does not abuse his discretion by entering a default against an operator for failure to appear at a scheduled hearing after waiting for 38 minutes, and where the operator offers no excuse on the day scheduled for hearing for its tardiness but on the next day explains to the judge that the delay was due to "unforeseen traffic conditions."

Rushton Mining Co., 6 IBMA 221 (June 29, 1976) 83 I.D. 256

Admissibility of Evidence

The precedent Notice and Orders underlying a sec. 104(c)(2) Order of Withdrawal are admissible in evidence to establish their existence in the sec. 104(c) chain as part of prima facie case.

Kentland-Elkhorn Coal Corp., 4 IBMA 166 (May 14, 1975) 82 I.D. 234

When an inspector-trainee observes conditions and practices in a mine relevant to a notice or order issued under the Act by an inspector, the former's testimony in regard thereto is not inadmissible on the ground that he is not an authorized representative of the Secretary.

American Coal Co., 8 IBMA 64 (July 14, 1977) 84 I.D. 354

Burden of Proof

Where MESA, in a review proceeding of a sec. 104(c)(2) Order of Withdrawal, fails to establish a prima facie case that the Order was validly issued pursuant to sec. 104(c) of the Act, the operator has no burden to present rebuttal evidence and is entitled to the relief requested.

Kentland-Elkhorn Coal Corp., 4 IBMA 166 (May 14, 1975) 82 I.D. 234

HEARINGS--Continued

Motions

The denial of a motion for a continuance will not be disturbed on appeal, unless it appears that the denial was an abuse of the trial judge's discretion and resulted in specific prejudice.

Zeigler Coal Co., 4 IBMA 30 (Jan. 28, 1975) 82 I.D. 36

Notice and Service

An operator must be given fair notice adequate to enable it to determine with reasonable certainty the type and number of violations charged by MESA as the basis for assessment of penalties.

Old Ben Coal Co., 4 IBMA 198 (June 6, 1975) 82 I.D. 264

An operator must be given fair notice adequate to enable it to determine with reasonable certainty the type and number of violations alleged by MESA as the basis for assessment of penalties.

Old Ben Coal Co., 4 IBMA 224 (June 6, 1975) 82 I.D. 277

An operator must be given adequate notice of the charge in a civil penalty proceeding brought under sec. 109 of the Act. 30 U.S.C. § 819 (1970). Failure by an operator to object to lack of due notice below, if the opportunity arises, results in a waiver of a claim of error based thereon.

Eastern Associated Coal Corp., 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

An operator is given fair notice of the type and number of violations charged where an order of withdrawal specifically enumerates conditions and alleges that each such condition is a violation of a specific mandatory safety standard.

Clinchfield Coal Co., 6 IBMA 319 (Sept. 27, 1976) 83 I.D. 350

Pleading

The acceptance by the administrative law judge of an answer to an order to show cause indicating the operator's desire for hearing and the subsequent issuance of a notice scheduling a hearing relieve the operator of the obligation to file an additional answer, and matters set forth in the Petition for Assessment of Civil Penalty are deemed to have been generally denied by the operator.

Rushton Mining Co., 6 IBMA 221 (June 29, 1976) 83 I.D. 256

Powers of Administrative Law Judges

Where an operator is held in default an administrative law judge errs in dismissing the proceeding for assessment of civil penalties without making a determination on the merits that no violation of the Act has occurred.

Ardee Coal Co., 4 IBMA 112 (Apr. 16, 1975) 82 I.D. 163

HEARINGS--Continued

Powers of Administrative Law Judges--Continued

An administrative law judge is required by 5 U.S.C. § 556 (1970) to conduct a hearing in a strictly impartial manner, not as a representative of an investigative or prosecuting authority.

Old Ben Coal Co., 4 IBMA 224 (June 6, 1975) 82 I.D. 277

An administrative law judge exceeds his authority in ordering MESA to cease and desist issuance of sec. 104(a) orders of withdrawal.

Eastern Associated Coal Corp., 4 IBMA 298 (June 27, 1975) 82 I.D. 311

Where an individual complied with the "self-certification" requirements of the regulations, actions by an administrative law judge in determining that an individual was ineligible to practice before Department and by the Board of Mine Operations Appeals to continue further consideration of the appeal pending a decision on the issue by the Solicitor, were unauthorized since the denial of an individual's right to practice before the Department in these circumstances constituted a disciplinary action which is within the sole authority of the Solicitor to adjudicate; therefore, the matter should have been referred to the Solicitor at the outset and the appeal should not have been delayed without the express approval of the Solicitor.

Final Decision of the Solicitor in the Matter of the Eligibility of Mr. James B. Kyper to Represent Eastern Associated Coal Corp. and Affinity Mining Co. Before the Department of the Interior, M-36883 (Feb. 9, 1976) 83 I.D. 131

The authority of an administrative law judge to issue show cause orders pursuant to 43 CFR 4.544(b) necessarily implies the authority to consider whether a response is adequate in showing cause why a default decision should not be entered against the respondent.

Associated Drilling, Inc., 6 IBMA 152 (May 27, 1976) 83 I.D. 220

An administrative law judge may sequester witnesses upon proper motion, but he may *not generally* preclude an attorney from consulting with a willing witness. 43 CFR 4.582.

In a case, where the record shows that an administrative law judge has clearly and grossly abused his discretion to the prejudice of both parties by undue and improper interrogation of witnesses and unnecessary interference in the presentation of a case, the Board may grant a new hearing before another trier of fact. 43 CFR 4.603.

Jack W. Parks v. L & M Coal Corp., 7 IBMA 172 (Dec. 23, 1976) 83 I.D. 710

Summary Decisions

Where no party has moved for summary decision under 43 CFR 4.590, it is error for an administrative law judge to use that regulation as a basis for proceeding to a decision in the absence of a hearing.

Island Creek Coal Co. and Virginia Pocahontas Co., 7 IBMA 1 (Sept. 30, 1976) 83 I.D. 419

HEARINGS--Continued

Waiver

Where a party to a proceeding has requested a hearing and there has been no unequivocal waiver thereof in writing, a hearing is required to be conducted by the provisions of 43 CFR 4.588, and failure to do so constitutes reversible error.

Island Creek Coal Co. and Virginia Pocahontas Co., 7 IBMA 1 (Sept. 30, 1976) 83 I.D. 419

IMMINENT DANGER

Generally

An administrative law judge errs in construing sec. 104(a) of the Act to grant the Secretary discretion to issue a mandatory order directing an operator to perform any action other than to withdraw persons from an area of a coal mine affected by an imminent danger.

Eastern Associated Coal Corp., 4 IBMA 1 (Jan. 23, 1975) 82 I.D. 22

Extent of Withdrawal

In the review of a withdrawal order issued under sec. 104(a), the inconsistency between an inspector's finding of imminent danger and his failure to withdraw men from one of the areas logically affected thereby, should not be relied on directly to find that no imminent danger existed but it is not improper to rely on that inconsistency indirectly in determining the inspector's credibility at the hearing.

Old Ben Coal Co., 8 IBMA 19 (June 28, 1977) 84 I.D. 332

Proximate Peril

A proximate peril to life and limb constituting an *imminent* danger does not exist where the potential for a disaster is so remote and speculative that a reasonable man would estimate that such disaster would not occur prior to abatement if normal operations to extract coal continued.

Rochester & Pittsburgh Coal Co., 5 IBMA 51 (July 31, 1975) 82 I.D. 368

A condition of float coal dust accumulations in energized electrical rectifier and starting boxes where arcing and sparking normally occur constitutes an imminent danger. 30 U.S.C. § 814 (1970).

Pocahontas Fuel Co., 6 IBMA 14 (Feb. 4, 1976) 83 I.D. 37

INCOMBUSTIBLE DUST PROGRAMS

Evidence

Sufficiency

The unchallenged testimony of an inspector that he followed instructions (departmental directives) pertaining to the gathering and packaging of dust samples, together with a laboratory analysis of dust samples, unchallenged

INCOMBUSTIBLE DUST PROGRAMS--Continued

Evidence--Continued

Sufficiency--Continued

by the operator, showing insufficient incombustible content, constitutes sufficient evidence to establish a violation of 30 CFR 75.403.

Mary E. Coal Co., Inc., 7 IBMA 98 (Nov. 24, 1976) 83 I.D. 579

MANDATORY HEALTH STANDARDS

Bathhouse and Changeroom Facilities

A violation of 30 CFR 75.1712-2, requiring that bathing and change-room facilities be provided in a central location convenient to all the miners where such facilities serve the miners of more than one mine, is not proved when the evidence shows that the average distance from the six mines served is 2.1 miles and the portal of the mine farthest from such facilities is only 1.1 miles farther than the portal of the nearest mine.

Carbon Fuel Co., 6 IBMA 20 (Feb. 20, 1976) 83 I.D. 39

MANDATORY SAFETY STANDARDS

Accumulations of Combustible Materials

Generally

The phrase "shall be cleaned up and not permitted to accumulate" encompasses but one act of violation of the safety standard set forth in sec. 304(a) of the Act and in 30 CFR 75.400.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

Congressional Purpose

The Congressional purpose of the safety standard contained in sec. 304(a) of the Act was to *minimize*, rather than *eliminate*, the inevitable accumulations of combustible materials in active workings of coal mines so that they would be unlikely to contribute to coal mine fires or propagate coal mine explosions.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

Coal Mine Operator Responsibility

At least three specific obligations are imposed upon coal mine operators by the provisions of sec. 304(a) of the Act and 30 CFR 75.400: (1) to inaugurate and maintain regular programs to clean up combustible materials that inevitably accumulate as a result of ordinary and routine mining operations; (2) to clean up as promptly after discovery as reasonable, extraordinary accumulations of combustibles resulting from such incidents as roof falls, belt breakage, and haulage accidents; and (3) to diligently pursue prompt discovery of such accumulations in active workings.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

MANDATORY SAFETY STANDARDS--Continued

Accumulations of Combustible Materials--Continued

Elements of Proof

The elements of proof required to establish a violation of the safety standard under sec. 304(a) of the Act, or 30 CFR 75.400, are: (1) that an accumulation of coal dust, float coal dust deposited on rock dusted surfaces, loose coal, or other combustible materials existed in the active workings of a coal mine; (2) that the coal mine operator was aware, or, by the exercise of due diligence, should have been aware of the existence of such accumulation; and (3) that the operator failed to clean up such accumulation, or undertake cleanup, within a reasonable time after discovery, or after discovery should have been made.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

Reasonable Time

What constitutes a "reasonable time" within which an operator may clean up an accumulation after discovery, in order to avoid violation of sec. 304(a) of the Act, or 30 CFR 75.400, depends upon a case-by-case evaluation of the likelihood of the spillage to contribute to a mine fire or to propagate an explosion. Factors to be considered include the mass, extent, combustibility, and volatility of the accumulation, as well as its proximity to an ignition source.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

Violations

The mere presence of a deposit or accumulation of coal dust, float coal dust, loose coal or other combustible materials in active workings in a coal mine is not, by itself, a violation of sec. 304(a) of the Act or 30 CFR 75.400.

Where a large accumulation of combustible material was present in the active workings of a coal mine, consisting mostly of spillage caused by a defective beltline, and the coal mine operator, within a reasonable time after discovery, dispatched a sufficient number of mine personnel to promptly clean up the accumulation, the operator *did not permit* the accumulation, and thus, did not violate the safety standard of sec. 304(a) of the Act or 30 CFR 75.400.

Old Ben Coal Co., 8 IBMA 98 (Aug. 17, 1977) 84 I.D. 459

Electric Equipment

The provisions of 30 CFR 75.512 require, *inter alia*, that all electric equipment be maintained in a manner to assure safe operating conditions, and the failure to properly guard drive chains on electrically operated loading machines constitutes a violation of such mandatory safety standard.

Bell Coal Co., Inc., 5 IBMA 155 (Sept. 23, 1975) 82 I.D. 450

Incombustible Contents

Where an administrative law judge finds that the methods for testing incombustible content of samples are reliable, results obtained by such methods indicating insufficient incombustible content will support a finding of violation of 30 CFR 75.403.

Old Ben Coal Co., 4 IBMA 198 (June 6, 1975) 82 I.D. 264

Maintenance of Electric Equipment

Proof of defective brakes on a roof bolt machine and of a missing guard on a belt chain drive constitutes prima facie evidence of a failure to maintain electric equipment "properly." 30 CFR 75.512.

Eastern Associated Coal Corp., 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

Methane Accumulations

Neither the Act nor the regulations provides that the mere presence of methane gas in excess of 1.0 volume per centum is per se a violation.

Mid-Continent Coal and Coke Co., 8 IBMA 204 (Nov. 10, 1977) 84 I.D. 919

Methane Tests

Sec. 303(h)(1) of the Act and its counterpart, 30 CFR 75.307, pertain only to methane tests at working places where electric equipment is operated or about to be operated. It is improper to cite an operator for violation of this standard when an operator fails to make methane tests at a working place where electrically operated equipment is neither present nor about to be operated.

United States Steel Corp., 5 IBMA 293 (Dec. 12, 1975) 82 I.D. 602

Permissibility

Generally

Once a permissibility specification becomes effective, machinery already or subsequently equipped with a part covered thereby cannot be maintained in permissible condition unless that part is kept in operational status.

Eastern Associated Coal Corp., 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

Brakes on Electric Face Equipment

The failure to maintain the brakes on an off-standard shuttle car in operational condition is a violation of the operator's obligation under 30 CFR 75.503 to maintain electric face equipment in permissible condition. 30 CFR 18.20(f).

Eastern Associated Coal Corp., 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

Schedule 2 G

Schedule 2 G, codified at 30 CFR Part 18, was effectively republished in accordance with sec. 101(j) of the Act, 30 U.S.C. § 811(j) (1970), at 35 FR 17890 (Nov. 20, 1970), where it was incorporated under 30 CFR 75.506.

Eastern Associated Coal Corp., 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

MANDATORY SAFETY STANDARDS--Continued

Permissibility--Continued

Switches on Electric Face Equipment

The failure to maintain the reset mechanism on electric face equipment switches in operational condition is a violation of an operator's obligation under 30 CFR 75.505 to maintain electric face equipment in permissible condition. 30 U.S.C. § 878(i) (1970), 30 CFR 75.520.

Eastern Associated Coal Corp., 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

Failure to maintain the reset mechanism on electric face equipment in operative condition is not a violation of an operator's obligation under 30 CFR 75.505 to maintain electric face equipment in permissible condition.

Eastern Associated Coal Corp. (On Reconsideration), 7 IBMA 14 (Sept. 30, 1976) 83 I.D. 425

Protective Equipment

Under 30 CFR 77.403, 36 FR 9364 (May 22, 1971), an operator was obliged to provide front-end loaders with roll protection, conditioned, however, on there being a necessity therefor, and when there was only an extremely slight chance of roll over, there was no such necessity and accordingly no obligation to do so.

Lone Star Steel Co., 7 IBMA 257 (Mar. 15, 1977) 84 I.D. 103

Recording Examinations

The results of examinations of emergency escapeways and facilities and for smokers' articles must be recorded weekly pursuant to 30 CFR 75.1801 as read in conjunction with 30 CFR 75.1702 and 30 CFR 75.1704.

Leckie Smokeless Coal Co., 5 IBMA 12 (July 29, 1975) 82 I.D. 353

Monthly examinations of circuit breakers and their auxiliary devices protecting high voltage circuits must be recorded monthly pursuant to 30 CFR 75.800-4 as read in conjunction with § 75.800-3 and § 75.1806.

Leckie Smokeless Coal Co., 5 IBMA 65 (Aug. 7, 1975) 82 I.D. 375

Roof Control

Under sec. 302(a) of the Act, the failure to prevent a person from proceeding beyond the last permanent roof support into an area lacking in the adequate temporary support required by the existing roof control plan constitutes a single violation. 30 U.S.C. § 862(a) (1970), 30 CFR 75.200.

Eastern Associated Coal Corp., 4 IBMA 184 (May 23, 1975) 82 I.D. 250

MANDATORY SAFETY STANDARDS--Continued

Roof Control--Continued

Individual provisions of a roof control plan, once adopted and approved by the Secretary are enforceable as mandatory standards as to the particular mine for which the plan was approved.

Zeigler Coal Co., 5 IBMA 132 (Sept. 19, 1975) 82 I.D. 441

A violation of 30 CFR 75.200 is established where it is shown that an operator failed to comply with the provisions of its approved roof control plan in that the roof bolting pattern prescribed therein was destroyed by loosening two roof bolts for use as cable anchors.

Peabody Coal Co., 8 IBMA 121 (Aug. 24, 1977) 84 I.D. 469

Roof Control Plans

Generally

An operator cannot be cited for a violation of a revision of a purported approved roof control plan unless such revision is first adopted by such operator. 30 U.S.C. § 862(a) (1970). 30 CFR 75.200, 75.200-2.

Bishop Coal Co., 5 IBMA 231 (Nov. 18, 1975) 82 I.D. 553

The obligation to "carry out" the provisions of an adopted, approved, and effective roof control plan is a mandatory safety standard. The failure to "carry out" particular provisions of the plan is a violation of such standard. 30 U.S.C. §§ 802(l), 826(a) (1970).

In the Matter of Affinity Mining Co. (Petitioner) v. MESA, UMWA (Respondents) (On Reconsideration), 6 IBMA 100 (Mar. 31, 1976) 83 I.D. 108

Evidence

Where the undisputed evidence adduced by MESA established that the operator failed to have crossbars installed when hillseams are encountered as required by the roof control plan, the Mining Enforcement and Safety Administration made out a prima facie case of violation of sec. 302(a) of the Act. 30 U.S.C. § 862(a) (1970). 30 CFR 75.200.

Dixie Fuel Co., Grays Knob Coal Co., 7 IBMA 71 (Nov. 9, 1976) 83 I.D. 551

Self-rescue Devices

Where a mine employee is observed underground without a self-rescue device, the operator properly may be held to be in violation of 30 CFR 75.1714-2(a).

Rushton Mining Co., 8 IBMA 255 (Feb. 16, 1978) 85 I.D. 63

Spalling Ribs

Neither the fact that a condition, such as spalling ribs, is difficult to control nor the fact that such a condition is a natural condition of the mining process precludes an inspector from properly issuing a notice

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

MANDATORY SAFETY STANDARDS--Continued

Spalling Ribs--Continued

of violation of 30 CFR 75.200. 30 U.S.C. § 862(a) (1970).

Dixie Fuel Co., Grays Knob Coal Co., 7 IBMA 71 (Nov. 9, 1976) 83 I.D. 551

Ventilation Plan

Evidence of failure by an operator to adhere to its approved ventilation plan will support the issuance of a notice and order under sec. 104(b) of the Act.

Zeigler Coal Co., 4 IBMA 30 (Jan. 28, 1975) 82 I.D. 36

Evidence of failure by an operator to comply with the provisions of its approved ventilation plan constitutes a violation of 30 CFR 75.316.

Peabody Coal Co., 8 IBMA 121 (Aug. 24, 1977) 84 I.D. 469

Violations

Negligence

An operator's freedom from negligence is not a factor to be considered in determining whether a violation of a mandatory safety standard occurred.

Rushton Mining Co., 8 IBMA 255 (Feb. 16, 1978) 85 I.D. 63

MINES SUBJECT TO THE ACT

In an underground coal mine owned and operated by two partners who are also the only miners in such mine, there being no employees, such owner-operators and the mine are, nevertheless, subject to the provisions of the Act, where the coal extracted from such mine enters commerce by being transported interstate.

Charles T. Sink, 5 IBMA 217 (Oct. 31, 1975) 82 I.D. 535

MODIFICATION OF APPLICATION OF MANDATORY HEALTH STANDARDS

Jurisdiction

Sec. 301(c) of the Federal Coal Mine Health and Safety Act of 1969 does not authorize modification of the application of mandatory *health* standards (sec. 301(c) and 43 CFR 4.500).

Kanawha Coal Co., 5 IBMA 299 (Dec. 12, 1975) 82 I.D. 605

MODIFICATION OF APPLICATION OF MANDATORY SAFETY STANDARDS

Generally

A petition for Modification of the Application of a Mandatory Safety Standard will not be granted where petitioner alleges but does not establish that in all respects and at all times the modification sought will be as safe as, or safer than, the mandatory safety standard.

Kentland-Elkhorn Coal Corp., Eastern Coal Corp., 4 IBMA 130 (Apr. 30, 1975) 82 I.D. 195

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

MODIFICATION OF APPLICATION OF MANDATORY SAFETY STANDARDS --Continued

Generally--Continued

An operator's Petition for Modification of the application of a mandatory safety standard will be denied where it fails to establish that the proposed alternative method will at all times guarantee no less than the same measure of safety protection to the miners as the mandatory standard.

Eastern Associated Coal Corp., 4 IBMA 273 (June 26, 1975) 82 I.D. 295

A petition for modification alleging in substance an erroneous interpretation of a mandatory safety standard by MESA does not state a claim upon which relief can be granted under sec. 301(c) of the Act. 30 U.S.C. § 861(c) (1970).

Itmann Coal Co., 6 IBMA 121 (Apr. 15, 1976) 83 I.D. 175

A petition for modification of the application of a regulation establishing criteria for approval of individual mine ventilation plans does not state a claim upon which relief can be granted under sec. 301(c) of the Act because such regulation is not a mandatory safety standard. 30 U.S.C. §§ 802(*l*), 861(c) (1970).

Old Ben Coal Co., 6 IBMA 163 (May 27, 1976) 83 I.D. 225

A Petition for Modification of the application of 30 CFR 75.1405 alleging that the mandatory standard does not apply to rubber-rail equipment which operates both on and off track fails to state a claim for which relief can be granted under sec. 301(c) of the Act. 30 U.S.C. § 861(c) (1970).

An administrative law judge lacks discretion under sec. 301(c) to grant an operator purely declaratory relief sought in a Petition for Modification of the application of a mandatory safety standard. 30 U.S.C. § 861(c) (1970).

Oneida Mining Co., North American Coal Corp., The Helen Mining Co., The Florence Mining Co., 6 IBMA 343 (Sept. 29, 1976) 83 I.D. 405

Where, in a proceeding to modify the application of the mandatory safety standard requiring that self-propelled electric face equipment be equipped with canopies or cabs (30 CFR 75.1710-1), a coal mine operator proves that the state of relevant mining operational conditions varies from time to time and does not remain static, it is error for the administrative law judge to grant relief on the basis of the state of such conditions at a particular point in time or at a particular operating location in the mine in disregard of the variability of these conditions.

It is error to grant relief in mining sections with mining heights above 56 inches where the Petition for Modification prayed for relief only in sections where the mining height is 56 inches or less.

It is error for the judge to deny all relief that is requested where the evidence of record will permit the granting of some relief.

Southern Ohio Coal Co., 7 IBMA 331 (May 23, 1977) 84 I.D. 268

MODIFICATION OF APPLICATION OF MANDATORY SAFETY STANDARDS --Continued

Automatic couplers

Where the evidence of record shows that a link aligner may not always be immediately available, as opposed to the ever-present automatic coupler, presenting an opportunity for a miner to position himself between mine cars to perform a coupling, a Petition for Modification to permit the use of link aligners must be denied as not providing the same degree of safety as automatic couplers in all respects and at all times.

Where the proponent of a Petition for Modification of the application of 30 CFR 75.1405 is unable to rebut evidence produced by MESA based upon measurements and calculations showing automatic couplers to be suitable for use in the subject mine with no diminution of safety to the miners, the Petition will be denied.

Canterbury Coal Co., 6 IBMA 276 (Sept. 13, 1976)
83 I.D. 325

Burden of Proof

Where an operator has established a prima facie case of diminution of safety, the issue of the availability of technology which would allow compliance with a mandatory safety standard without a diminution of safety is an affirmative defense available to the Mining Enforcement and Safety Administration, and it is not necessary for the operator to prove that *no* such technology exists in order to prevail.

Southern Ohio Coal Co., 7 IBMA 331 (May 23, 1977)
84 I.D. 208

Diminution of Safety

Where an operator presents prima facie evidence in a sec. 301(c) proceeding proving that the application of a mandatory standard to a particular mine will result in a diminution of safety to the miners in such mine in the form of greatly increased prospects of roof fall, and its case prevails by a preponderance of the evidence over that presented by opposing parties, the modification may be granted.

Cannelton Industries, Inc., 4 IBMA 74 (Mar. 21, 1975)
82 I.D. 102

Publication

Pursuant to subsection (c) of sec. 301, notice of receipt of a petition for modification must be published in the *Federal Register*, but such publication requirement does not apply to issuance of an adjudicative decision.

Cannelton Industries, Inc., 4 IBMA 74 (Mar. 21, 1975)
82 I.D. 102

Roof Control Plans

The Secretary's authority to approve or disapprove roof control plans and revisions thereof under sec. 302(a) of the Act has been delegated exclusively to MESA, and such plans are not subject to modification by way of petitions to modify the application of a mandatory standard filed pursuant to sec. 301(c) of the Act.

In the Matter of Affinity Mining Co. (Petitioner) v. Mining Enforcement and Safety Administration (Respondent), United Mine Workers of America (Respondent), 5 IBMA 36 (July 31, 1975) 82 I.D. 362

MODIFICATION OF APPLICATION OF MANDATORY SAFETY STANDARDS --Continued

Roof Control Plans--Continued

The application of particular provisions of a roof control plan is subject to modification under sec. 301(c) of the Act. 30 U.S.C. § 861(c) (1970).

In the Matter of Affinity Mining Co. (Petitioner) v. MESA, UMWA (Respondents) (On Reconsideration), 6 IBMA 100 (Mar. 31, 1976) 83 I.D. 108

NOTICES OF VIOLATION

Abatement

Respirable dust samples required to be taken pursuant to 30 CFR 70.250 may be taken during any shift so long as the miner whose work atmosphere is being sampled is employed in his usual occupation.

United States Steel Corp., 7 IBMA 109 (Nov. 29, 1976)
83 I.D. 584

Party to be Charged

Where trucks owned by a haulage contractor operate without backup alarms on coal mine property in violation of 30 CFR 77.410, and thus endanger the miners employed by the principal coal mine operator, the proper party to be charged in the resulting notice of violation is the principal coal mine operator, since it has the direct responsibility to assure the health and safety of such miners.

Peggs Run Coal Co., Inc., 5 IBMA 175 (Sept. 30, 1975)
82 I.D. 516

An owner-operator of a coal mine, rather than the independent contractor, was properly charged with a violation where its employees were endangered by the violation and it could have removed the hazard with a minimum of effort. Sec. 3(d) of the Act. 30 U.S.C. § 802(d).

West Freedom Mining Corp., Black Fox Mining and Development Corp., AB-HS Coal Corp., Perry-Ross Coal Co., 5 IBMA 329 (Dec. 17, 1975) 82 I.D. 618

Where the miners employed by an operator of a coal mine are exposed to a safety hazard created by the lack of required backup alarms on delivery trucks owned by a seller of coal and where the operator is in a realistic position to prevent or abate the violation with a minimum of due diligence, such operator is a proper party to be charged with the violation. 30 CFR 77.410.

Armco Steel Corp., 6 IBMA 64 (Mar. 15, 1976)
83 I.D. 77

Reasonableness of Time

In a review proceeding, an administrative law judge abuses his discretion under sec. 105(b) by vacating a notice of violation on the ground that the time originally fixed therein is unreasonably short because such action is inconsistent with the Secretary's statutory obligation under sec. 109 to assess a civil penalty for every violation of the mandatory health or safety standards. 30 U.S.C. § 815(b) (1970).

Old Ben Coal Co., 6 IBMA 294 (Sept. 16, 1976)
83 I.D. 335

NOTICES OF VIOLATION--Continued

Reasonableness of Time--Continued

Where a pattern of granting extensions of time is established to permit step-by-step accomplishment of an approved noise-control plan, an additional extension of time granted in conformance with such pattern will not be held by the Board to be unreasonable.

Kanawha Coal Co., 7 IBMA 158 (Dec. 21, 1976)
83 I.D. 704

Reportable Accidents

The unintentional covering by intentional roof fall of a continuous mining machine during pillar mining constitutes a reportable accident pursuant to sec. 103(e) of the Act, as implemented by 30 CFR 80.1(b)(10).

United States Steel Corp., 8 IBMA 156 (Sept. 30, 1977)
84 I.D. 825

Sufficiency

Where neither an order nor modification thereof describes a condition or practice constituting an alleged violation of a mandatory safety or health standard as required by sec. 104(e) of the Act, an administrative law judge is correct in vacating any proposed penalty assessment based on such inadequate notice. 30 U.S.C. § 814(e) (1970).

Ashland Mining and Development Co., Inc., 5 IBMA 259 (Nov. 19, 1975)
82 I.D. 578

Where a notice of violation does not clearly indicate which of two possible standards is alleged to be violated and an inspector's testimony supports neither the written description nor the section of the regulations cited, such notice is properly vacated.

Tilden Coal Co., 7 IBMA 57 (Oct. 15, 1976) 83 I.D. 515

It is improper to cite a general regulation governing ventilation plans where the alleged violation is based solely on an excessive accumulation of methane gas.

Mid-Continent Coal and Coke Co., 8 IBMA 204 (Nov. 10, 1977)
84 I.D. 919

PARTIES

Failure to Answer

Under 43 CFR 4.507, a "statutory party" who fails to file an initial responsive pleading loses its status as a party and is subject to dismissal.

Old Ben Coal Co., 5 IBMA 19 (July 30, 1975) 82 I.D. 355

Failure to Participate

Where a party to an application for review proceeding under sec. 105 of the Act deliberately and persistently fails to participate in such proceeding before the administrative law judge, it may be dismissed as a party within the discretion of the judge or the Interior

PARTIES--Continued

Failure to Participate--Continued

Board of Mine Operations Appeals. 30 U.S.C. § 815 (1970).

In the Matter of Old Ben Coal Corp. (No. 24 Mine), 4 IBMA 104 (Apr. 10, 1975)
82 I.D. 160

The Interior Board of Mine Operations Appeals will not overturn an administrative law judge's dismissal of a party in a review proceeding for deliberate and persistent failure to participate where no abuse of discretion has been shown.

Old Ben Coal Co., 5 IBMA 19 (July 30, 1975) 82 I.D. 355

The obligation of a representative of miners to file a responsive pleading under 43 CFR 4.507(c), in order to thereafter participate in the proceeding, arises after the operator has perfected service of the application for review upon such representative.

In the Matter of Alabama By-Products Corp. (Maxine Mine), 5 IBMA 100 (Aug. 25, 1975)
82 I.D. 409

PENALTIES

Admissibility of Previous Violations

Only those violations charged prior to those in issue, and for which penalties have been paid, settled by compromise, or finally ordered to be paid by the Department, are admissible as evidence in considering an operator's history of previous violations.

Peggs Run Coal Co., Inc., 5 IBMA 144 (Sept. 22, 1975)
82 I.D. 445

A violation for which a penalty is paid by an operator which is less than the amount originally assessed by MESA is admissible as evidence in considering an operator's history of previous violations. 30 U.S.C. § 819(a)(1) (1970).

Peggs Run Coal Co., Inc., 6 IBMA 212 (June 28, 1976)
83 I.D. 245

Amounts

In a sec. 109 de novo proceeding, an administrative law judge may determine an amount of civil penalty for violations charged and found to have occurred higher than that proposed by the MESA Assessment Office for such violations where such determination is based upon consideration of the statutory criteria and findings which justify his assessments.

Old Ben Coal Co., 4 IBMA 198 (June 6, 1975) 82 I.D. 264

Old Ben Coal Co., 4 IBMA 224 (June 6, 1975) 82 I.D. 277

Gay Coal, Inc., 7 IBMA 245 (Mar. 10, 1977) 84 I.D. 95

An obvious roof control violation which could have been discovered and abated by the operator, and which results

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

PENALTIES--Continued

Amounts--Continued

in a roof fall injuring a miner, warrants a sizable penalty appropriate to the circumstances and commensurate with the deterrent intent of the Act.

Island Creek Coal Co., 6 IBMA 240 (June 30, 1976)
83 I.D. 264

Inasmuch as sec. 109 of the Act mandates the assessment of a civil penalty where a violation has been found to exist, it is error to assess a zero penalty in such circumstances because a zero penalty is no penalty. 30 U.S.C. § 819(a) (1970).

B. B. Coal Co., 7 IBMA 64 (Oct. 27, 1976) 83 I.D. 526

Criteria

Official Notice

Where an administrative law judge bases ultimate findings of fact upon officially noticed facts and leaves the record open for submission of rebuttal, the failure to take advantage of such opportunity for rebuttal results in waiver of objections.

Eastern Associated Coal Corp., 5 IBMA 185 (Sept. 30, 1975)
82 I.D. 506

Elements of Proof

Although the fact of violation of a mandatory health or safety standard by a corporate coal mine operator is a necessary element of proof, such proof is not legally required to be established in a separate or consolidated proceeding against such operator as a condition precedent to instituting a proceeding against an agent of such operator under sec. 109(c) of the Act. 30 U.S.C. § 819(c) (1970).

Everett L. Pritt, 8 IBMA 216 (Nov. 30, 1977)
84 I.D. 960

Existence of Violation

Generally

A violation of 30 CFR 75.517 is established where it is shown that the outer protective insulating jacket of a trailing cable is cut through to the extent that the inner phase lead insulation is exposed.

Old Ben Coal Co., 4 IBMA 224 (June 6, 1975) 82 I.D. 277

A violation of 30 CFR 75.805 is established where it is shown that Miller plugs, connectors of the singlephase variety, are being employed on high-voltage electrical equipment.

Peabody Coal Co., 7 IBMA 318 (May 20, 1977)
84 I.D. 202

Evidence

A fact may be inferred from circumstantial evidence, and such fact may be the basis of further inference leading to the ultimate or sought for fact.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

PENALTIES--Continued

Existence of Violation--Continued

Evidence--Continued

Where an inspector describes a condition alleging that a violation occurred during the working shift immediately preceding the shift in which the inspection is made, a prima facie case that the violation occurred during the preceding shift may be made out by means of an inference drawn from facts established by direct evidence, provided that such inference is more probable than any other inference which can be drawn from such facts.

Rushton Mining Co., 6 IBMA 329 (Sept. 29, 1976)
83 I.D. 399

Mitigation

The amounts assessed as civil penalties will not be disturbed where it appears that an administrative law judge has given weight to evidence of economic losses suffered as a result of a vacated withdrawal order.

Zeigler Coal Co., 5 IBMA 132 (Sept. 10, 1975)
82 I.D. 441

Economic losses suffered by an operator as a result of a vacated withdrawal order need not be considered as a mitigating factor in a penalty proceeding arising out of a condition or practice cited in such order where such losses are not affirmatively pleaded at or before the hearing. Sec. 109(a) of the Act. 30 U.S.C. § 819(a) (1970).

Zeigler Coal Co., 5 IBMA 338 (Dec. 17, 1975)
82 I.D. 622

Where a withdrawal order is found to be validly issued, economic loss due to such order is properly excluded from consideration as a mitigating factor in determining a penalty assessment pursuant to sec. 109(a) of the Act.

Zeigler Coal Co., 5 IBMA 356 (Dec. 19, 1975)
82 I.D. 636

Negligence

An operator can be liable for a civil penalty under sec. 109 of the Act even though there is no showing of negligence on his part. Negligence is considered solely in determining the amount of the penalty.

Webster County Coal Corp., 7 IBMA 264 (Mar. 16, 1977)
84 I.D. 111

Procedure of Assessment

A technical defect in the assessment process does not affect the jurisdiction of an administrative law judge and, in the absence of prejudice to a party, may be cured by an amendment to the petition.

Peabody Coal Co., 7 IBMA 318 (May 20, 1977)
84 I.D. 202

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

PENALTIES--Continued

Reasonableness

In view of the operator's negligence in failing to provide "competent, substitute, supervisory personnel" and the seriousness of the resultant mandatory safety standard violation of 30 CFR 75.301, a civil penalty assessment of $400 is not excessive.

Rushton Mining Co., 8 IBMA 255 (Feb. 16, 1978)
85 I.D. 63

REGULATIONS

Generally

An operator's failure to notify MESA immediately of a gas ignition, in accordance with 30 CFR 80.11, constitutes a violation of sec. 103(e) of the Act (30 U.S.C. § 813(e) (1970)).

United States Steel Corp., 8 IBMA 230 (Dec. 21, 1977)
84 I.D. 1003

RESPIRATORY DUST PROGRAM

Generally

An operator may challenge whether scientific procedures set forth in the regulations were being complied with in a given case, but may not raise issues regarding their scientific reliability in an administrative proceeding inasmuch as such issues would pertain to the validity of the Secretary's regulations, a matter beyond the authority of the Board.

Eastern Associated Coal Corp., 5 IBMA 185 (Sept. 30, 1975)
82 I.D. 506

A notice of violation of 30 CFR 70.100(a) must be vacated where an operator overcomes MESA's prima facie case by establishing as an affirmative defense by a preponderance of the evidence that it was cited for concentrations of dust which are not wholly "respirable" within the meaning of the Act and regulations. 30 U.S.C. § 878(k) (1970) and 30 CFR 70.2(i).

Eastern Associated Coal Corp. (On Reconsideration), 7 IBMA 14 (Sept. 30, 1976)
83 I.D. 425

Coal dust particulates in excess of 5 microns in size are not "respirable dust" as a matter of law under 30 U.S.C. § 878(k) (1970) and 30 CFR 70.2(i).

Eastern Associated Coal Corp. (On Reconsideration En Banc), 7 IBMA 133 (Dec. 20, 1976)
83 I.D. 695

Sufficiency of Evidence

Under 30 CFR 70.220(a)(3), 35 FR 5544 (Apr. 3, 1970), MESA must prove the existence of an underlying notice of violation of 30 CFR 70.100(a) or (c) if the existence of such notice is in issue.

Eastern Associated Coal Corp., 5 IBMA 185 (Sept. 30, 1975)
82 I.D. 506

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

REVIEW OF NOTICES AND ORDERS

Generally

The validity of the precedent notice and orders is not in issue in a proceeding for review of an order of withdrawal issued pursuant to sec. 104(c)(2) of the Act.

Kentland-Elkhorn Coal Corp., 4 IBMA 166 (May 14, 1975)
82 I.D. 234

Zeigler Coal Co., 5 IBMA 346 (Dec. 18, 1975)
82 I.D. 632

The validity of the precedent notice and order is not in issue in a proceeding for review of an Order of Withdrawal issued pursuant to sec. 104(c)(2) of the Act unless applications for review are filed within 30 days of the issuance of the precedent notice and order (43 CFR 4.530(c)).

Zeigler Coal Co., 6 IBMA 182 (June 22, 1976)
83 I.D. 232

In a proceeding for review of a sec. 104(c)(2) order of withdrawal, the validity, substantive or procedural, of a precedent sec. 104(c)(2) order of withdrawal is not in issue and may not be decided by the Office of Hearings and Appeals.

The erroneous and inarticulate comprehension of the standard for unwarrantable failure by the issuing inspector does not prejudice the operator where the facts as found support a conclusion of unwarrantable failure using the proper standard.

Pocahontas Fuel Co., 8 IBMA 136 (Sept. 28, 1977)
84 I.D. 488

Delegation

The Secretary has delegated his jurisdiction to review orders issued pursuant to sec. 103 of the Act to the Office of Hearings and Appeals for decision, initially by the administrative law judges, and ultimately by the Interior Board of Mine Operations Appeals.

Eastern Associated Coal Corp., 5 IBMA 74 (Aug. 15, 1975)
82 I.D. 392

Dismissal of Applications

Failure of the applicant for review to attend a prehearing conference after receiving notice of its scheduling is ground for dismissal of the application.

Perry-Ross Coal Co., 5 IBMA 5 (July 25, 1975)
82 I.D. 349

An application for review of a notice modifying an earlier notice of violation issued pursuant to sec. 104(b) of the Act should be dismissed where the condition cited in the earlier notice has been fully abated and a notice of termination issued.

Affinity Mining Co., 5 IBMA 126 (Sept. 15, 1975)
82 I.D. 439

REVIEW OF NOTICES AND ORDERS--Continued

Dismissal of Applications--Continued

A representative of miners has a statutory and regulatory right to review of a notice of termination containing a finding of abatement as an incident to a timely filed application for review of a previous sec. 104(b) notice of violation in which such representative contends that such notice fixed a time for abatement that was unreasonable. 30 U.S.C. § 815 (1970), 43 CFR 4.1, 4.500, 4.530, 4.533.

An application for review of an original or modified sec. 104(b) notice of violation filed by a representative of miners does not become moot merely because MESA issues a notice of termination containing a finding of abatement. 30 U.S.C. § 815 (1970).

Affinity Mining Co. (On Reconsideration), 6 IBMA 193 (June 25, 1976) 83 I.D. 236

Jurisdiction

The Secretary has both the jurisdiction and the obligation, upon appropriate application therefor, to review an order issued pursuant to sec. 103 of the Act.

Eastern Associated Coal Corp., 5 IBMA 74 (Aug. 15, 1975) 82 I.D. 392

The Secretary of the Interior has jurisdiction to assess a civil penalty under sec. 109(c) of the Act, 30 U.S.C. § 819(c) (1970), and such penalty is not criminal in nature.

In the Matter of Daniel Hensler, 5 IBMA 115 (Sept. 12, 1975) 82 I.D. 434

Notice and Service

Pursuant to sec. 105(a) of the Act, 30 U.S.C. § 815(a) (1970), and 30 CFR 81.5, an operator is obliged to serve an application for review on the appropriate representative of miners at the address listed in the valid, existing certificate of representation.

In the Matter of Alabama By-Products Corp. (Maxine Mine), 5 IBMA 100 (Aug. 25, 1975) 82 I.D. 409

Scope of Review

Where an administrative law judge erroneously finds the evidence of record to be in equipoise with respect to all disputed elements of proof, the Interior Board of Mine Operations Appeals may make its own findings from the record determining the preponderant weight of the evidence. 43 CFR 4.605.

Zeigler Coal Co., 4 IBMA 88 (Mar. 31, 1975) 82 I.D. 111

SECRETARIAL ORDERS

Generally

An order signed by the Secretary which establishes enforcement policy is binding throughout the Department, and its validity is neither procedurally nor substantively subject to challenge at the administrative level.

Republic Steel Corp., 5 IBMA 306 (Dec. 16, 1975) 82 I.D. 607

Cowin and Co., Inc., 6 IBMA 351 (Sept. 29, 1976) 83 I.D. 409

TEMPORARY RELIEF

Generally

Temporary relief from the effect of a notice of violation issued under sec. 104(b) in the form of an order by the Board restraining MESA from issuing an order of withdrawal thereunder during the pendency of a review proceeding pursuant to sec. 105 of the Act is expressly barred as a matter of law. 30 U.S.C. § 815(d) (1970), 43 CFR 4.572.

Old Ben Coal Co., 7 IBMA 272 (Mar. 30, 1977) 84 I.D. 124

UNAVAILABILITY OF EQUIPMENT, MATERIALS, OR QUALIFIED TECHNICIANS

Generally

A violation of a mandatory health or safety standard is not established where compliance is impossible due to the unavailability of equipment, materials, or qualified technicians.

Itmann Coal Co., 4 IBMA 61 (Mar. 18, 1975) 82 I.D. 96

Pleading and Proof

When a notice of violation or order of withdrawal is issued for failure to comply with a mandatory health or safety standard, there is a rebuttable presumption that required equipment, materials, and qualified technicians are available to the operator. 30 U.S.C. § 819(a)(1) (1970).

In a penalty proceeding involving an alleged failure to provide a methane monitor, the defense of unavailability of equipment is an affirmative defense which, to be sustained, must be pleaded and proved by the operator. 30 U.S.C. § 819(a)(1) (1970); 43 CFR 4.542.

P & P Coal Co., 6 IBMA 86 (Mar. 22, 1976) 83 I.D. 91

Sufficiency

The fact that equipment required to abate a condition is on order, standing alone, will not support a conclusion of unavailability of that equipment.

Robbins Coal Co., 5 IBMA 268 (Nov. 20, 1975) 82 I.D. 581

UNWARRANTABLE FAILURE

Generally

The phrase unwarrantable failure to comply means the failure of an operator to abate a condition or practice constituting a violation of a mandatory standard it knew or should have known existed, or the failure to abate such a condition or practice because of a lack of due diligence, or because of indifference or lack of reasonable care. 30 U.S.C. § 814(c) (1970).

Zeigler Coal Co., 7 IBMA 280 (Mar. 31, 1977) 84 I.D. 127

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

UNWARRANTABLE FAILURE--Continued

Notices of Violation

Under sec. 105(a) of the Act, 30 U.S.C. § 815(a) (1970), an operator may file an application for review of a sec. 104(b) notice of violation with 104(c)(1) findings only if it wishes to challenge the reasonableness of time fixed for abatement. Subsequent to abatement, review of such notice under sec. 105(a) may be obtained only as an incident to the review of a related sec. 104(c)(1) withdrawal order.

Zeigler Coal Co. (On Reconsideration), 4 IBMA 139 (May 13, 1975) 82 I.D. 221

A notice of violation issued pursuant to sec. 104(c)(1) of the Act may not be challenged directly, by itself, in an Application for Review under sec. 105 of the Act where the violation cited therein has been abated.

Eastern Associated Coal Corp., 4 IBMA 184 (May 23, 1975) 82 I.D. 250

A violation of a mandatory standard is not "of such nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard" if it poses either a purely technical instance of noncompliance or a source of any injury which has only a remote or speculative chance of coming to fruition. 30 U.S.C. § 814(c)(1) (1970).

A notice of violation may be issued under sec. 104(c)(1) without regard for the seriousness or gravity of the injury likely to result from the hazard posed by the violation, that is, an inspector need not find a risk of serious bodily harm, let alone of death. 30 U.S.C. § 814(c)(1) (1970).

Alabama By-Products Corp. (On Reconsideration), 7 IBMA 85 (Nov. 23, 1976) 83 I.D. 574

Withdrawal Orders

Generally

An Application for Review of a sec. 104(c)(2) withdrawal order is properly denied where the evidence shows that a violation occurred, that the condition or practice cited posed a probable risk of serious bodily harm or death, but short of imminent danger, and also, that the operator demonstrated a reckless disregard for the health and safety of the miners.

Zeigler Coal Co., 5 IBMA 346 (Dec. 18, 1975) 82 I.D. 632

Imminent Danger

Conditions or practices specified in an order should be considered collectively for the purpose of determining imminent danger. 30 U.S.C. § 814 (1970).

Zeigler Coal Co., 5 IBMA 356 (Dec. 19, 1975) 82 I.D. 636

VALIDITY OF REGULATIONS

The Board, as delegate of the Secretary, has not been empowered to entertain a challenge to the validity of regulations promulgated by the Secretary pursuant to sec. 508 of the Federal Coal Mine Health and Safety Act of 1969. 30 U.S.C. § 957 (1970); 43 CFR 4.1.

United Mine Workers of America v. Inland Steel Co., 6 IBMA 71 (Mar. 17, 1976) 83 I.D. 67

WITHDRAWAL ORDERS

Generally

A sec. 104(c)(2) withdrawal order is properly issued where it is shown that such order is based on a violation of a mandatory health or safety standard which is caused by the operator's unwarrantable failure to comply and no consideration need be given to whether the violation was of such a nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard (30 U.S.C. § 814(c)(2) (1970)).

Zeigler Coal Co., 6 IBMA 182 (June 22, 1976) 83 I.D. 232

Old Ben Coal Co., 6 IBMA 229 (June 30, 1976) 83 I.D. 260

Old Ben Coal Co., 6 IBMA 234 (June 30, 1976) 83 I.D. 262

Failure to Abate

Where an inspector finds that a violation has not been abated within the time fixed for abatement, his authority under sec. 104(b) of the Act to issue either an extension of time or an order of withdrawal must be exercised reasonably based on the facts confronting him at the time. 30 U.S.C. § 814(b) (1970).

United States Steel Corp., 7 IBMA 109 (Nov. 29, 1976) 83 I.D. 584

Imminent Danger

Accumulations of loose coal, coal dust, and oil and grease together with sources of potential ignition will support a finding of imminent danger.

Zeigler Coal Co., 6 IBMA 132 (Apr. 30, 1976) 83 I.D. 204

A sec. 104(a) withdrawal order must be based on an imminent danger existing at the time of issuance of such order and cannot properly be based on a danger which is speculative, has subsided, or has been abated (30 U.S.C. §§ 801(j) and 814(a) (1970)).

Old Ben Coal Co., 6 IBMA 256 (July 13, 1976) 83 I.D. 294

Specificity

Where a sec. 104(a) withdrawal order fails to give *any* description of the conditions or practices assertedly creating the alleged imminent danger, the various portions of the Act relating to the sec. 104(e) requirement that orders issued contain a detailed description of such conditions or practices demand that such an order be vacated.

Armco Steel Corp., 8 IBMA 88 (Aug. 17, 1977) 84 I.D. 454

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

WITHDRAWAL ORDERS--Continued

Unwarrantable Failure

The misfeasance of a preshift examiner in failing to detect the existence of a violation of the Act may be imputed to the operator so as to support a conclusion of unwarrantable failure on the operator's part.

Pocahontas Fuel Co., 8 IBMA 136 (Sept. 28, 1977)
84 I.D. 488

FEDERAL EMPLOYEES AND OFFICERS

GENERALLY

Bureau of Land Management personnel have no affirmative duty to take extraordinary measures to save an oil and gas lessee from the possible consequences of his own negligence.

Richard V. Bowman 19 IBLA 261 (Mar. 31, 1975)

Frank H. Crosby, 25 IBLA 160 (June 14, 1976)

Assertions, even if established, that employees of the Bureau of Land Management assured an oil and gas lessee that drilling a leasehold on the last day of the lease term was sufficient, without more, to extend the lease, and that the lessee relied upon such representations, afford the lessee no relief. Rights not authorized by law cannot be acquired through misinformation given by employees of the Bureau of Land Management.

Charles M. Goad, 25 IBLA 130 (June 7, 1976)

Bureau of Land Management personnel have no affirmative duty to take extraordinary measures to preserve an oil and gas lease or to save the lessee from the possible consequences of his own conduct of his affairs concerning such lease.

Where, by prearrangement, as part of a business negotiation, a third party assumes responsibility for the payment of the annual rentals for two oil and gas leases which subsequently terminate by operation of law when the rental check is dishonored by the drawee bank, the leases will not be reinstated on the strength of the lessee's naked assertion that the uncollectability of the check was deliberately contrived as part of a scheme to deprive him of the lease so that the third party could be granted the leases unlawfully by a Federal employee.

Stanley J. Pirtle, 26 IBLA 348 (Sept. 7, 1976)

It is not the responsibility of Bureau of Land Management employees to decipher ambiguous bids for outer continental shelf oil and gas leases in order to save the bidder from the consequences of his own negligence. A bid which was apparently intended for one tract and contains data appropriate for that tract, but identifies a different tract as the subject of the bid, is properly considered, and rejected as too low, for the identified tract.

Alaska Oil and Minerals Corp., 29 IBLA 224 (Mar. 23, 1977)
84 I.D. 114

FEDERAL EMPLOYEES AND OFFICERS--Continued

GENERALLY--Continued

A delay in the adjudication of an application by officers or employees of the Department cannot create rights in Federal property contrary to law.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

A Government mineral examiner, versed in mining engineering and/or geology is qualified to evaluate a mining claim for a particular mineral even though he does not possess specific experience as to that mineral.

United States v. Doris Conger Caldwell, 33 IBLA 153 (Dec. 19, 1977)

An agent of the Government has no authority to grant a right contrary to a statute of the Congress.

Amerada Hess Corp., 33 IBLA 293 (Jan. 18, 1978)

Personnel of BLM are not required to alter, modify, or correct an application for a right-of-way in order to conform such application to the requirements of the regulation under which it was filed.

Beehive Telephone Co., Inc., 38 IBLA 80 (Nov. 9, 1978)

AUTHORITY TO BIND GOVERNMENT

A contiguous landowner loses his preference right to purchase land offered at public sale when he fails to submit his preference right bid within the 30-day period provided by regulation; the Government's failure to return the check which accompanied his unsuccessful bid during this period, and his reliance on assurances it had been returned, do not excuse noncompliance with the preference right regulation, 43 CFR 2711.4(b)(1).

Basil B. Twist, 19 IBLA 75 (Feb. 26, 1975)

Bureau of Land Management personnel have no affirmative duty to take extraordinary measures to save an oil and gas lessee from the possible consequences of his own negligence.

Richard V. Bowman, 19 IBLA 261 (Mar. 31, 1975)

Frank H. Crosby, 25 IBLA 160 (June 14, 1976)

The authority of the Government to proceed with the determination of the validity of a mining claim is not barred by laches, because Government property is not to be disposed of contrary to law, despite any acquiescence, laches, or failure to act on the part of its officer or agents.

Montana Copper King Mining Co. et al., 20 IBLA 30 (Apr. 16, 1975)

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

George D. Jackson, 20 IBLA 253 (May 16, 1975)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

Rights not authorized by law cannot be acquired through reliance on erroneous information given by employees of the Bureau of Land Management.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

Generally, the Government is not estopped from demanding oil and gas lease royalty payments it is owed, even if its employees may have made prior mistakes in accepting or computing the royalty.

Gulf Oil Corp. et al., 21 IBLA 1 (June 16, 1975)

Advice or information received over the telephone from personnel of the Bureau of Land Management does not constitute a "bill or decision rendered by" the Department under 30 U.S.C. § 188(b) (1970).

C. J. Iverson, 21 IBLA 312 (Aug. 14. 1975) 82 I.D. 386

Reliance upon erroneous or incomplete information provided by BLM employees cannot create any rights not authorized by law.

John F. Brown, 22 IBLA 133 (Sept. 26, 1975)

Margaret Hughey Hugus, 22 IBLA 146 (Sept. 30, 1975)

M. R. C. Croley, 32 IBLA 5 (Aug. 24, 1977)

Joe I. and Celina V. Sanchez, et al., 32 IBLA 228 (Sept. 20, 1977)

Vernon F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance thereon, with the result that the claimant was thereby induced to do so, to his ultimate damage.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

Unauthorized acts by an employee of the Bureau of Indian Affairs cannot serve as the basis for conferring rights not authorized by law. Moreover, neither the Secretary of the Interior nor the Department is bound or estopped by such unauthorized acts.

Administrative Appeal of Joe McComas, 5 IBIA 125 (June 11, 1976) 83 I.D. 227

A noncompetitive oil and gas lease applicant's failure to submit the statement of interest of the other parties in interest to the offer is not excused, nor is the Department estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease to the applicant on an offer which was deficient for the same reason.

Leon N. Flanagan et al., 25 IBLA 269 (June 24, 1976)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

An applicant for a private land exchange cannot benefit from the doctrine of equitable estoppel where no agent of the Government who was authorized to consummate the exchange falsely and materially misrepresented to or concealed material facts from appellant concerning the Government's position with respect to the proposed exchange.

Siesta Investments, Inc., 28 IBLA 118 (Nov. 15, 1976)

Where an applicant for grazing privileges does not show the type of misconduct which would be a basis for estoppel against the Government, the provisions of 43 CFR 4115.2-1(e)(9)(i) and (e)(13)(i) cannot be waived on the basis of such misconduct.

A. L. Findley (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

Reliance upon erroneous advice by Bureau of Land Management employees cannot estop the United States or confer upon an applicant any rights not authorized by law. 43 CFR 1810.3(c). Where it is not established that the asserted advice was erroneous, estoppel does not operate.

United States v. Ronald B. Tippetts, 29 IBLA 346 (Mar. 31, 1977)

Even if the Bureau of Land Management incorrectly noted a withdrawal order on a status plat and appellant purportedly relied on this status plat when locating his mining claim, the mining claim, located on withdrawn land, is null and void because reliance upon records maintained by land offices cannot operate to vest any right not authorized by law.

Rod Knight, 30 IBLA 224 (May 26, 1977)

As a general rule, an applicant is not entitled to rely upon misinformation or erroneous advice given by departmental employees to acquire any rights in public lands not authorized by law. A corporation filing an oil and gas lease offer, signed by an officer not designated in accordance with 43 CFR 3102.4-1 as authorized to act on its behalf, cannot rely on the fact that the officer's signature was accepted by the Department on documents filed in unrelated matters to excuse its failure to provide the mandatory authorization.

Emerald Oil Co., 31 IBLA 119 (June 24, 1977)

The Government is not estopped from applying new provisions enacted in an amendment to the Mineral Leasing Act to an application for modification of an existing coal lease on account of laches, administrative delay, or misrepresentation by Government employees of the fact of Federal ownership of the land sought in the application.

Estate of Malcolm N. McKinnon, 31 IBLA 290 (July 22, 1977)

Reliance upon erroneous and incomplete information provided by Federal employees cannot create any rights not authorized by law.

Mark W. Moore and John L. Dutra, 33 IBLA 32 (Nov. 25, 1977)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The authority of the Government to proceed with the withdrawal of public lands, after a Federal agency has filed an application for such action, which withdraws that land from mineral location, will not be barred by laches because of lapse of time.

William J. Smith, Sr., et al., 33 IBLA 47 (Nov. 25, 1977)

The failure of a noncompetitive oil and gas lease offeror to complete the date on the simultaneous oil and gas drawing entry card is not excused, and the Department is not estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease in acceptance of an offer which was deficient for the same reason.

Tina A. Regan, 33 IBLA 213 (Dec. 21, 1977)

An agent of the Government has no authority to grant a right contrary to a statute of the Congress.

Amerada Hess Corp., 33 IBLA 293 (Jan. 10, 1978)

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Belton E. Hall, 33 IBLA 349 (Jan. 18, 1978)

WZL Investment Corp., 36 IBLA 355 (Aug. 31, 1978)

Dermot S. McGlinchey, 38 IBLA 211 (Dec. 6, 1978)

The Government is not estopped from collecting royalty payments which are owed, even if it has accepted improper payments in the past.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

Long-term belief by Federal officers that land was subject to a valid patent, when, in fact, the land could not legally have been conveyed because of withdrawal or reservation, does not serve as a basis for divesting the Government of title to the land by estoppel.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

Reliance upon erroneous information provided by employees of the Bureau of Land Management cannot create any rights not authorized by law. The fact that a coal prospecting permittee alleges he was assured by BLM employees that he would receive permit extensions does not prevent the applicability of subsequent legislation which prohibits such extensions from causing his extension applications to be rejected.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978)
85 I.D. 161

Where BLM reduced grazier's privileges because of his loss of ownership of base property from which his qualifications had not in fact been transferred away for attachment to other property owned by grazier, equitable estoppel is not invoked against BLM since grazier by his own testimony at hearing showed that he was not ignorant of true facts as to lack of transfer back of grazing qualifications and that he did not in fact rely to his detriment on BLM official's representations on that transfer back.

Roger J. Rasmusson, 36 IBLA 98 (July 13, 1978)

Where a mining claimant alleges that forest rangers allowed him to build and occupy a cabin on the claim without informing him that it was illegal to do so, it is not appropriate to estop the Government from declaring the claim null and void, for several reasons: mere acquiescence in an action is not "affirmative misconduct" by a Government employee, as it was not false representation or concealment of material facts done with the intent that the claimant rely thereon; the impression created by the inaction of the forest rangers was not erroneous and, so, claimant was not misled, as he could rightfully move the cabin to the site and occupy it as long as so doing was incident to mineral development of a valid mining claim; and because the claimant should have known that he could not live on the premises indefinitely despite his failure to develop the claim, and that he would have to move the cabin or lose it, if the claim was declared null and void.

The Government is not barred from declaring a mining claim null and void by the doctrine of laches.

United States v. Joseph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

Reliance upon erroneous advice provided by a non-Governmental filing service cannot relieve an oil and gas applicant of an obligation imposed on him by regulation.

John G. Keane, 37 IBLA 364 (Nov. 2, 1978)

Reliance upon erroneous or incomplete information provided by employees of the Bureau of Land Management cannot create any rights not authorized by law.

Juan Munoz, 39 IBLA 72 (Jan. 24, 1979)

J. A. Masek, 40 IBLA 123 (Mar. 27, 1979)

John C. Schandelmeier, 42 IBLA 240 (Aug. 22, 1979)

Tilden Holloway, Roland Wright, 43 IBLA 134 (Sept. 28, 1979)

Reliance on erroneous information provided by Federal employees cannot create any rights not authorized by law.

W. R. and Margaret W. Collier, 39 IBLA 81 (Jan. 24, 1979)

Southern California Motorcycle Club, Inc., Sierra Club, 42 IBLA 164 (Aug. 17, 1979)

Erroneous issuance by BLM of oil and gas lease on other withdrawn land in area of tract for which appellant submitted lease offer does not effect restoration to leasing of latter withdrawn tract.

E. M. Tully, 39 IBLA 137 (Jan. 29, 1979)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

Reliance upon erroneous notations to a BLM serial register page or incomplete information provided by BLM employees cannot create any rights not authorized by law.

Alver C. Duncan, 39 IBLA 144 (Jan. 29, 1979)

Estoppel to preclude a charge of trespass is not invoked against BLM where BLM's partially completed fences on Federal land do not restrain cattle and there is no evidence that BLM agreed to construct and/or maintain said fences for the benefit of the grazier, and such grazier was at all times aware of these facts.

The grazing regulations (43 CFR 4140.1(b)(1), *inter alia*) (formerly 43 CFR 4112.3-1(a) and (b)) place the responsibility of controlling cattle squarely on the grazier, and Government range management policies as implemented under acts of Congress cannot be asserted to bar sanctions where trespasses have been proved, or to estop BLM from alleging trespasses.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

The authority of the United States to enforce a public right or protect a public interest, including its right to cancel invalid mining claims which encumber the public lands, is not vitiated or lost by acquiescence of its officers or agents, or by their laches or delays in the performance of their duties. Regardless of this rule, laches is not appropriate where it appears that the Government's failure to act probably resulted from unfamiliarity with existence of these mining claims.

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

Dorothy Smith, 39 IBLA 306 (Feb. 23, 1979)

The Government is not estopped from rejecting oil and gas lease offers because the offerors' leasing agent alleges that he relied on a representation by officers of BLM that his disclaimer of his interest in the offer was valid and therefore failed to amend his service agreement with his clients to remove the interest-creating provision, where it appears that BLM did not in fact so represent.

Frederick W. Lowey et al., 40 IBLA 381 (May 14, 1979)

Reliance on incomplete information supplied by Bureau of Land Management employees cannot estop the United States or excuse compliance with a regulation.

Fred S. Ghelarducci, 41 IBLA 277 (June 28, 1979)

INTEREST IN LANDS

Where a sec. 15 grazing lease is issued to an applicant whose brother is an employee of this Department, and such employee owns stock in the corporation that owns the contiguous fee land, control over which the applicant asserts as the basis for his preference right to the grazing lease, such applicant cannot be granted the desired grazing lease. Any such lease must be canceled when the facts are called to the Department's attention. This result occurs under 43 CFR 7.2 and 7.3 which prohibit any employee from acquiring or retaining any interest in the lands or resources administered by the Bureau of Land Management. The prohibition extends to any interest in land which in any manner is connected with or involves the use of the grazing resources administered by the Bureau of Land Management.

Donald E. and Nancy P. Jansen (On Reconsideration), 19 IBLA 154 (Mar. 14, 1975) 82 I.D. 93

The regulations governing Departmental employees' rights to hold a direct or indirect interest in public lands must be construed *in pari materia* with the regulations governing qualification to hold a grazing lease under sec. 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970). A non-employee may be disqualified from holding a lease by his business relationship with an employee if the issuance of the lease would create an interest in public land proscribed by regulation.

Donald E. and Nancy P. Jansen (On Reconsideration), 23 IBLA 374 (Feb. 4, 1976)

MEMBERS OF CONGRESS

One of the functions of the Department of Justice is to construe the laws under which other Government Departments act, 28 U.S.C. § 512 (1970), and when the Department of Justice has advised the Department of the Interior that it has construed a conflict of interest statute affecting Members of Congress and has determined that it is permissible for the spouse of a member of Congress to hold a grazing lease for national resource lands under certain circumstances, that opinion is binding on this Department, and a grazing lease is properly issued when the applicant has satisfied the criteria set forth by the Department of Justice.

Joseph T. Kurkowski, 24 IBLA 58 (Feb. 23, 1976)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

GENERALLY

An appeal to the Board of Land Appeals will be dismissed where the enactment of the Federal Land Policy and Management Act renders moot the questions on appeal.

Silver Peak Townsite (Trustee), 30 IBLA 357 (June 30, 1977)

An application filed in 1976 to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-raising Homestead Act were impliedly repealed by the Taylor Grazing Act and were expressly repealed by the Federal Land Policy and Management Act.

A petition-application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

GENERALLY--Continued

Under the Federal Land Policy and Management Act of 1976 and interim guidelines issued pursuant thereto, special use permit applications for access roads over public land are properly processed as right-of-way applications. 43 U.S.C. § 1761. The Bureau of Land Management correctly denies such an application where it has determined, in conformance with the Act and interim guidelines, that an access road would neither be in the public interest nor facilitate land management policy.

Edwin L. Rumpf, Jr., 31 IBLA 367 (Aug. 1, 1977)

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Treva L. Berger. 31 IBLA 389 (Aug. 19, 1977)

A right-of-way for a communication site for which application was made under the Act of Mar. 4, 1911, shall conform to the provisions of the Federal Land Policy and Management Act of 1976, sec. 510, 90 Stat. 2743, 2782, when application for grant was pending on Oct. 21, 1976.

Four States Television, Inc., 32 IBLA 205 (Sept. 19, 1977)

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring grazing lease receives first priority for the new lease if the requirements of sec. 402(c) are met. Therefore, a conflicting applicant is properly denied the lease where the renewal applicant meets those requirements.

Allen B. Prouse, 32 IBLA 311 (Sept. 30, 1977)
84 I.D. 874

George T. McDonald, Cascade Ranches, Inc., 35 IBLA 75 (May 12, 1978)

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring lease shall be given first priority for receipt of the new lease as long as the lessee is in compliance with the rules and regulations issued and the terms and conditions in the lease. Therefore, if the holder of an expiring lease loses control of the private property contiguous to public land which gave him a preference right to a lease under 43 CFR 4121.2-1(c), he is not entitled to first priority for receipt of a new lease.

Mark K. Trask. 32 IBLA 395 (Nov. 9, 1977)

Sec. 310 of the Federal Land Policy and Management Act of 1976 provides that, prior to promulgation of new regulations, the Secretary will administer the public lands under existing regulations to the extent practical. Issuance of a right-of-way permit for an electrical power transmission line prior to the promulgation of new regulations under sec. 504 of the Act is permissible under the authority in sec. 310.

The fact that various of the existing regulations in 43 CFR Part 2800, governing issuance of rights-of-way, are not wholly consistent with the Federal Land Policy Management Act of 1976 does not render invalid a BLM decision granting a right-of-way under the authority of sec. 310 of that Act.

Sec. 505, Federal Land Policy and Management Act of 1976, does not require that preliminary planning considerations be enumerated on the face of a grant of a right-of-way.

The third party participation provision of sec. 102(a)(5), Federal Land Policy and Management Act of 1976, is entirely satisfied by a series of public hearings held prior to the grant of a power transmission right-of-way.

David Smith Ranches et al. (Appellants), Colorado Ute Electric Ass'n, Inc. (Intervenor). 33 IBLA 7 (Nov. 15, 1977)

Under sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1764(g) (West Supp. 1977), charges for rights-of-way on public lands are in general to be paid annually rather than in advance for a longer period pursuant to 43 CFR 2802.1-7(a).

XYZ Television, Inc., 33 IBLA 60 (Dec. 8, 1977)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

The failure of a mining claimant to file the notice of recordation required by sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), cannot be excused on the basis of equitable estoppel where no discussion covering the 90-day requirement was had between the Department and appellant's representatives.

Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (Jan. 16, 1978)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as applications under the Federal Land Policy and Management Act of 1976, but, to the extent practical, existing regulations will govern the administration of the public lands until new regulations are issued.

Continental Telephone of California, 34 IBLA 374 (May 1, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

R. Wade Holder et al., 35 IBLA 169 (May 22, 1978)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, the owner of an unpatented mining claim must file a notice of intention to hold his claim prior to Dec. 31 of the calendar year following the date of location of such claim, or the claim shall be deemed conclusively to have been abandoned.

Donald H. Little. 37 IBLA 1 (Sept. 6, 1978)

Juan Munoz. 39 IBLA 72 (Jan. 24, 1979)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as filed under the Federal Land Policy and Management Act of 1976.

Arnold E. Bedell. 37 IBLA 22 (Sept. 12, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2, the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, shall, within 90 days after the date of location of such claim, file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

James P. Giancarlo. 37 IBLA 88 (Sept. 22, 1978)

Leland H. Bray. 37 IBLA 120 (Oct. 3, 1978)

Roy N. Dykes. 39 IBLA 32 (Jan. 15, 1979)

Phillip H. Gardiner et al.. 41 IBLA 391 (July 24, 1979)

The Small Tract Act, *as amended*, 43 U.S.C. § 682a *et seq.* (1970) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, and no land may be purchased under th Act. Where a State Office decision approves an application for purchase of a tract of land filed pursuant to the Small Tract Act in order to correct an error in a land description in another patent previously issued to appellants under the Small Tract Act, the decision will be reversed and the case remanded to the State Office for determination of whether the original patent may be corrected under sec. 316 of FLPMA, Correction of Conveyance Documents, 43 U.S.C. § 1746 (1970).

Richard O. Dale et al.. 38 IBLA 175 (Dec. 6, 1978)

Where the owner of unpatented mining claims located after Oct. 21, 1976, fails to file evidence of annual assessment work or a notice of intention to hold the claims prior to Dec. 31 of the year following the calendar year in which the claims were *located*, the claims are properly deemed abandoned and void pursuant to sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C.A. § 1744 (Supp. 1978), and 43 CFR 3833.2-1(b)(1) and 43 CFR 3833.4(a).

Public Service Co. of Oklahoma. 38 IBLA 193 (Dec. 6, 1978)

The Small Tract Act, 43 U.S.C. § 682a-e (1970), was repealed by sec. 702, Federal Land Policy and Management Act of 1976, Oct. 21, 1976, P.L. 94-579, 90 Stat. 2787. Renewal of a small tract lease was discretionary under the former Small Tract Act, so there was no right to renewal of a small tract lease preserved by sec. 701 of FLPMA. Any use or occupancy of the public domain granted subsequent to Oct. 21, 1976, must be under authority contained in FLPMA.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Arthur G. Lane, Jr.. 38 IBLA 297 (Dec. 14, 1978)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not statute enacted by Congress is constitutional.

Al Sherman. 38 IBLA 300 (Dec. 14, 1978)

Where off-road vehicles pose a potential threat to plants proposed for listing under the Endangered Species Act of 1973, 87 Stat. 884, as endangered, and interfere with the educational and scientific value of an area of the public lands which its status as a registered natural landmark under the Historic Sites Act, *as amended*, 16 U.S.C. §§ 461-467 (1976), seeks to enhance, the BLM may close such area of the public lands to off-road vehicular use, pending further study, pursuant to the multiple use management provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1732 and 1733 (1976).

California Ass'n of Four-Wheel Drive Clubs et al.. 38 IBLA 361 (Dec. 29, 1978)

Authority to dispose of land within Alaska railroad townsites under 43 U.S.C. § 975b (1970) was repealed by sec. 704(a) of the Federal Land Policy and Management Act of 1976.

Because issuance of a patent removes the land from Departmental jurisdiction, it is not proper to issue that patent simultaneously with dismissal of a protest against the patent application because such action deprives the protester of his right to review and precludes compliance with 43 U.S.C.A. § 1701(a)(5) (West Supp. 1978) which mandates objective administrative review of initial decisions.

Matanuska-Susitna Borough, Inc.. 38 IBLA 362 (Dec. 29, 1978)

The Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1702(h) (West Supp. 1978), providing for sustained yield management of timber resources, and 16 U.S.C. §§ 594, 594-1 (1970), which direct a policy of preserving forest resources from insect infestation and damage, envisage that the Department is under an obligation to protect timber from such ravages, including without limitation, the sale of timber so affected.

George Jalbert et al.. 39 IBLA 205 (Feb. 2, 1979)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim, or the claim is deemed abandoned and void.

Dale C. Belor. 40 IBLA 80 (Mar. 22, 1979)

Jim Spicer. 42 IBLA 208 (Aug. 27, 1979)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

R.S. 2387, 2388 and 2389, 43 U.S.C. §§ 718-720 (1976), were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and any transfer of land for a townsite within a National Forest after the effective date of FLPMA, Oct. 21, 1976, must be made under authority of sec. 213 of that Act. The filing of an application under other statutes prior to the enactment of FLPMA does not constitute a valid existing right which would survive FLPMA.

Townsite of Liberty, 40 IBLA 317 (Apr. 30, 1979)

The Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq*. (1976), does not establish any reserved rights in BLM lands.

The management programs mandated by Congress in such Acts as the Taylor Grazing Act and FLPMA require the appropriation of water by the United States in order to assure the success of the programs and carry out the objectives established by Congress.

Sec. 701(g) of FLPMA, 43 U.S.C. § 1701 notes (1976), maintains the status quo in the relationship between the States and the Federal Government on water, and allows for (a) the continued appropriation of unappropriated nonnavigable waters on the public domain by private persons pursuant to State law as authorized by the Desert Land Act; (b) the right of the United States to use unappropriated water for the congressionally recognized and mandated purposes set forth in legislation providing for the management of the public domain; and (c) application by the United States to secure water rights pursuant to State law for these purposes.

FLPMA, the Taylor Grazing Act, the O&C Act, and other statutes permit the United States to appropriate water for the diverse purposes found in the various statutes.

FLPMA authorizes the BLM to appropriate water for such uses as fish and wildlife maintenance and protection, scenic value preservation, and human consumption, and protection of areas of critical environmental concern.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

"Public Lands." Land within an interim conveyance to a Native Corporation is no longer "public land" under the Federal Land Policy and Management Act nor subject to Bureau of Land Management jurisdiction to issue rights-of-way under that Act.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

Sec. 314 of the Federal Land Policy and Management Act of 1976 was enacted to establish a Federal recording system for mining claims to facilitate Federal land use planning and management. Failure to comply with the mandatory filing requirements constitutes abandonment of the claim and the land reverts to the status of public domain.

In the absence of a specific regulation or policy directive specifying the type of proof necessary for recordation, the Bureau of Land Management should liberally consider attempts by a mining claimant under sec. 314 of the Federal Land and Policy Management Act to record notice of a mining claim where proof of recording cannot be made and 30 U.S.C. § 38 (1976) is relied upon for holding the claim, and before rejecting a filing for such a claim, BLM should request further evidence from the claimant which it would consider satisfactory. Such evidence should include at a minimum the name the claim is and has been known by, the name and address of the claimant, an adequate description of the claim, the type of claim, the time of holding and working the claim to meet a State's statute of limitations and, if possible, the date of the origin of claimant's title and facts as to continuation of possession of the claim, and any other information available showing a chain of title to the claimant and bearing upon the possession and occupancy of the claim for mining purposes, and other information which the Bureau of Land Management deems essential to meet the purposes of the recordation provision.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Phillip Sayer, 42 IBLA 296 (Aug. 27, 1979)

The regulation, 43 CFR 3833.2-1(b)(1), requiring evidence of assessment work to be filed prior to Dec. 31 of the year following location of the claim, is mandatory. Failure to comply therewith must result in a finding that the claim has been abandoned.

Donald L. Fulgham, 42 IBLA 330 (Aug. 30, 1979)

The Federal Land Policy and Management Act of 1976 requires, among other things, (1) a determination by the Secretary of Agriculture that the public interest will be well served by a proposed national forest exchange; (2) that evaluation of the public interest shall fully consider the panoply of Federal, State, and local needs enumerated; and (3) that the Secretary shall find that the values and objectives to be served by Federal lands, if retained, do not exceed the values of, and public objectives serviceable by, the proffered lands if acquired.

Petro Leasco, Inc., 42 IBLA 345 (Aug. 31, 1979)

Pursuant to 43 U.S.C. § 1712(e)(3) (1976), a wholly owned Government corporation may acquire and hold rights as a citizen under the Mining Law of 1872.

John B. Meadows, 43 IBLA 35 (Sept. 12, 1979)

Departmental regulations 43 CFR Subpart 3109 and 43 CFR 3120.2-3, and sec. 603 of the Federal Land Policy and Management Act of 1976 provide ample authority for the Bureau of Land Management to require oil and gas lessees to agree to wilderness protection stipulations.

Palmer Oil and Gas Co., 43 IBLA 115 (Sept. 24, 1979)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where appellants timely file for record an "amended" location notice, accompanied by the original location notice which is untimely on its face, the mining claim is properly deemed abandoned as to the original location, but not as to the "amended" claim if it is a relocation of the claim under the law.

Walter T. Paul, James H. Beyer, 43 IBLA 119 (Sept. 24, 1979)

GENERALLY--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Dec. 14, 1977, and the filing fee therefor is not paid to BLM until Feb. 10, 1978, the recordation date of the notice is Feb. 10, 1978.

Joe B. Cashman, 43 IBLA 239 (Oct. 10, 1979)

A proposed Federal timber sale does not violate the principle of multiple use embodied in the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), where it involves Oregon and California revested land committed by the Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1976), to dominant use management for commercial forestry.

Elaine Mikels et al., 44 IBLA 51 (Nov. 19, 1979)

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Faith C. Hartman, 44 IBLA 310 (Dec. 31, 1979)

ASSESSMENT WORK

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h), not the date on which the owner completes the last step in locating and recording a mining claim as required by State law.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h).

Donald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

ASSESSMENT WORK--Continued

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

W. A. Starr and Ida Elaie McGilley, 38 IBLA 74 (Nov. 5, 1978)

Under 43 CFR 3833.2-1(b), the owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned, under 43 CFR 3833.4(a).

John B. Caurruthers, 38 IBLA 77 (Nov. 9, 1978)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located after Oct. 21, 1976, is not supported annually by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement there was no intent to abandon and that failure to file was an oversight.

Nuclear Power and Energy Co. and R-2, Inc., 41 IBLA 142 (June 14, 1979)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which he recorded the claim in the BLM office, his claim is properly deemed conclusively to have been abandoned.

Charles and Pete Carson, 41 IBLA 302 (June 29, 1979)

Under the Federal Land Policy and Management Act of 1976, sec. 314, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Oct. 10, 1977, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned.

Bruce Parks, 42 IBLA 18 (July 25, 1979)

Under the Federal Land Policy and Management Act of 1976, § 314, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claims located in 1977 must file an affidavit of assessment work or a notice of intention to hold the claim prior to Dec. 31 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned. Where an appellant asserts on appeal that he timely mailed proof of labor to the Bureau of Land Management, but the documents were not received by that office, the documents cannot be considered as filed with that office unless and until they are received by it.

John Newkirk et al., 42 IBLA 292 (Aug. 27, 1979)

James E. Yates, 42 IBLA 391 (Sept. 11, 1979)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which he recorded the claim in the BLM office, his claim is properly deemed conclusively to have been abandoned and to be null and void.

A State law which requires filing of proof of assessment work which requirement is more liberal than the recordation requirement of the Federal Land Policy and Management Act of 1976, § 314a, 43 U.S.C. § 1744 (1976), cannot override the more onerous requirements of the latter, since Article VI, Clause 2 of the Federal Constitution makes the Constitution, and laws and treaties made in conformity therewith, the supreme law of the land.

James V. Joyce, 42 IBLA 383 (Sept. 11, 1979)

Under the Federal Land Policy and Management Act of 1976, sec. 314, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claims located in 1977 must file affidavits of assessment work or notices of intention to hold the claims prior to Dec. 31 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned, and may properly be declared void.

Ernest K. Lehmann and Associates, 43 IBLA 1 (Sept. 11, 1979)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location of the claim is the date as defined in 43 CFR 3833.0-5(h).

Under 43 U.S.C. § 1744(a) (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned. Sec. 1744(a) does not conflict with 30 U.S.C. § 28 (1976) which pertains to the year in which the first affidavit of assessment work must be recorded.

Charlie Carnal, Walter Peck, and Edward Borzansky, 43 IBLA 10 (Sept. 11, 1979)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Dec. 14, 1977, and the filing fee therefor is not paid to BLM until Feb. 10, 1978, the recordation date of the notice is Feb. 10, 1978.

Joe B. Cashman, 43 IBLA 239 (Oct. 10, 1979)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the year in which the claim was located or the claim will be conclusively deemed to have been abandoned.

Lester L. Rhoads, 43 IBLA 380 (Oct. 31, 1979)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year or the claim will be conclusively deemed to have been abandoned.

William A. Berry, 44 IBLA 162 (Nov. 30, 1979)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before the last day of the calendar year following the year the claim was recorded with BLM, the claim is properly deemed void.

Valda Waters, 44 IBLA 272 (Dec. 26, 1979)

DISCLAIMERS OF INTEREST

The Bureau of Land Management should suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976 where no regulations have been issued under which action may be taken and where there is no contrary policy directive.

Grace Cooley Coleman, Leota Ferrell, 35 IBLA 236 (May 26, 1978)

Where private land exchange was for surface rights only and applicant's warranty deed mistakenly conveys a fee simple absolute, the facts concerning which are well-documented, on equitable principles an applicant may be entitled to issuance of a disclaimer of interest in the mineral estate. 43 U.S.C. § 1745 (1976).

Dennis Potts, 42 IBLA 355 (Sept. 11, 1979)

EXCHANGES

The appraised values of offered and selected lands in a land exchange application made pursuant to the Federal Land Policy and Management Act of 1976 are properly determined where such values are set in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions.

Paul Kellerblock, 38 IBLA 160 (Dec. 5, 1978)

The Federal Land Policy and Management Act of 1976 requires, among other things, (1) a determination by the Secretary of Agriculture that the public interest will be well served by a proposed national forest exchange; (2) that evaluation of the public interest shall fully consider the panoply of Federal, State, and local needs enumerated; and (3) that the Secretary shall find that the values and objectives to be served by Federal lands, if retained, do not exceed the values of, and public objectives serviceable by, the proffered lands if acquired.

Petro Leasco, Inc., 42 IBLA 345 (Aug. 31, 1979)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

EXCHANGES--Continued

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716(a) (1976), the Bureau of Land Management may reject an application to exchange public lands for private lands as not in the public interest in order to protect a significant waterfowl habitat.

Staley Anderson, 44 IBLA 58 (Nov. 20, 1979)

GRAZING LEASES AND PERMITS

A decision renewing a grazing lease and rejecting a conflicting application which is rendered in accordance with the governing statutory standard set out in sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752(c) (___ Supp. 197_), will not be overturned in the absence of convincing reasons that the award is not warranted.

Fancher Bros., 33 IBLA 262 (Jan. 5, 1978)

A decision made under 43 CFR 4.470 *et seq.* regarding future use of the Federal Range will be set aside if it is necessary that issues involved therein be considered under regulations newly promulgated pursuant to Federal Land Policy and Management Act of 1976.

United States v. View Point Ranches, 37 IBLA 357 (Oct. 31, 1978)

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of FLPMA, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations.

Earl M. Platt, 43 IBLA 41 (Sept. 18, 1979) 86 I.D. 458

PERMITS

Temporary use permits for purposes associated with rights-of-way issued under sec. 501 of the Federal Land Policy and Management Act of 1976, may only be issued pursuant to sec. 504(a) of that Act.

The provisions of sec. 504(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(a) (1976), do not authorize the issuance of temporary use permits either as a preconstruction permit absent an existing right-of-way or for use as a transmission site right-of-way.

James W. Smith, 44 IBLA 275 (Dec. 26, 1979)

PUBLIC PARTICIPATION

Public notice and hearing is not required by the *Code of Federal Regulations* prior to closure of areas of the public lands to outdoor recreation use pursuant to 43 CFR 6010.4, implementing the multiple use management provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1732 and 1733 (1976).

California Ass'n of Four-Wheel Drive Clubs et al., 38 IBLA 361 (Dec. 29, 1978)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

The holding of a mining claim and the diligent pursuance of mining activities on it does not relieve its owner of the obligation imposed by statute to file an affidavit of assessment work or a notice of intention to hold a mining claim.

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

Where the owner of unpatented mining claims located after Oct. 21, 1976, fails to file evidence of annual assessment work or a notice of intention to hold the claims prior to Dec. 31 of the year following the calendar year in which the claims were *located*, the claims are properly deemed abandoned and void pursuant to sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C.A. § 1744 (Supp. 1978), and 43 CFR 3833.2-1(b)(1) and 43 CFR 3833.4(a).

Public Service Co. of Oklahoma, 38 IBLA 193 (Dec. 6, 1978)

Appellant's prior filings of mining claim documents with BLM do not relieve him of filing obligations imposed by sec. 314 of Federal Land Policy and Management Act and implementing regulations at 43 CFR Subpart 3833, which are binding.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located after Oct. 21, 1976, is not supported annually by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement there was no intent to abandon and that failure to file was an oversight.

Nuclear Power and Energy Co. and E-Z, Inc., 41 IBLA 142 (June 14, 1979)

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Clair W. Caldwell et al., 42 IBLA 139 (Aug. 16, 1979)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location of the claim is the date as defined in 43 CFR 3833.0-5(h).

Charlie Carnal, Walter Peck, and Edward Porzansky, 43 IBLA 10 (Sept. 11, 1979)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Dec. 14, 1977, and the filing fee therefor is not paid to BLM until Feb. 10, 1978, the recordation date of the notice is Feb. 10, 1978.

Joe B. Cashman, 43 IBLA 239 (Oct. 10, 1979)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Sept. 30, 1977, and the filing fee therefore is not paid to BLM until July 18, 1978, the recordation date of the notice of location is July 18, 1978. In the circumstances, the evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim must be filed in the proper BLM office on or before Oct. 22, 1979, pursuant to 43 CFR 3833.2-1(a). Duly promulgated regulations have the force and effect of law and are binding on the Department.

NRG Mining, Inc., 44 IBLA 126 (Nov. 27, 1979)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before the last day of the calendar year following the year the claim was recorded with BLM, the claim is properly deemed void.

Valda Waters, 44 IBLA 272 (Dec. 26, 1979)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the United States mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio. Attempts to record such claims under 43 U.S.C.A. § 1744 (West Supp. 1978) are properly rejected.

The Bureau of Land Management may require maps of mining claims meeting the requirements of 43 CFR 3833.1-2(c)(7) before accepting the recordation of the claims under 43 U.S.C.A. § 1744 (West Supp. 1977).

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Paul S. Coupey, 33 IBLA 178 (Dec. 20, 1977)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (Jan. 16, 1978)

R. Wade Holder et al., 35 IBLA 169 (May 22, 1978)

Owners of unpatented mining claims located after Oct. 21, 1977, must file a copy of the official record of the notice of location or certificate of location with the appropriate State Office of the Bureau of Land Management within 90 days of the date of location notwithstanding that the filing would be required prior to the promulgation of regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976.

Pelton E. Hall, 33 IBLA 349 (Jan. 18, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded at the office of the Bureau of Land Management designated by the Secretary of the Interior, within 90 days after the date of location. By regulation the BLM State Offices are designated the proper offices for mining claim recordations.

Failure to record mining claims in accordance with sec. 314 of the Federal Land Policy and Management Act of 1976 is deemed conclusively to constitute abandonment of the claims. Filing the recordation documents in a Bureau of Land Management District Office, rather than in the proper State Office, the day before the expiration of the 90-day statutory deadline for recordation does not constitute timely recordation. In such circumstances, the BLM State Office properly rejected the recordations upon receipt of the documents after the 90-day deadline had passed.

Irwin W. Sweeney, 34 IBLA 205 (Mar. 23, 1978)

Pursuant to sec. 314(b) of the Federal Land Policy and Management Act of 1976, a copy of the official record of the notice of location of a mining claim must be filed within 90 days after location of the claim. In computing this period the date of location is not counted but the last day of the period is. Thus, when a claim is located on Sept. 1, 1977, a notice filed on Dec. 1, 1977, is 1 day late, Nov. 30, 1977, being the 90th day.

Robert Thompson, 34 IBLA 319 (Apr. 24, 1978)

"Date of location." Date of location of a mining claim is no later than the date on which the claimant certified he had complied with all requirements of law, as indicated by his signature on the notice and certificate of location. The date of recording the location notice of a mining claim in the county records has no bearing on the "date of location" of the claim, from which the 90-day period for recordation in BLM under FLPMA begins.

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded at the office of the Bureau of Land Management designated by the Secretary of the Interior, within 90 days after the date of location. By regulation the BLM State Offices are designated the proper offices for mining claim recordations each within its area of jurisdiction. BLM State Offices properly refuse to record notices of location of mining claims not received by the proper BLM State Office before the end of the 90-day period set by statute.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded in the proper office of the Bureau of Land Management within 90 days from the date of location, not within 90 days from the date the claims were recorded under State law. BLM properly refuses to accept for recordation notices of location filed after the 90-day period.

Doyle Mason, 35 IBLA 40 (May 8, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h), not the date on which the owner completes the last step in locating and recording a mining claim as required by State law.

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h).

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

Where certificates of location as to mining claims have not been filed (received and date stamped) at the proper Bureau of Land Management office within 90 days of the date of location, as required by the regulation, 43 CFR 3833.1-2(b), for claims located after Oct. 21, 1976, the Bureau must refuse to accept the certificates and declare the claims to be null and void.

Neither the Federal Land Policy and Management Act of 1976 nor the applicable regulations make provision for relief where the death of an employee instructed to file certificates of location for the mining claims of his employer, as required by 43 CFR 3833.1-2(b), causes the filing to be more than 90 days after the date of location of the claims.

R. P. Rossen, 36 IBLA 379 (Aug. 31, 1978)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, the owner of an unpatented mining claim must file a notice of intention to hold his claim prior to Dec. 31 of the calendar year following the date of location of such claim, or the claim shall be deemed conclusively to have been abandoned.

Donald B. Little, 37 IBLA 1 (Sept. 6, 1978)

Juan Munoz, 39 IBLA 72 (Jan. 24, 1979)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C.A. § 1744 (Supp. 1978), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim located after Oct. 21, 1976, is void, and any later filing of the notice is invalid.

G. Antolini & Son, 37 IBLA 13 (Sept. 8, 1978)

William E. Rhodes, 38 IBLA 127 (Nov. 22, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2, the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, shall, within 90 days after the date of location of such claim, file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

James P. Giancarlo, 37 IBLA 88 (Sept. 22, 1978)

Leland B. Pray, 37 IBLA 120 (Oct. 3, 1978)

Roy M. Byron, 39 IBLA 32 (Jan. 15, 1979)

Phillip E. Gardiner et al., 41 IBLA 391 (July 24, 1979)

Appellant's prior filings of mining claim documents with BLM do not relieve him of filing obligations imposed by sec. 314 of Federal Land Policy and Management Act and implementing regulations at 43 CFR Subpart 3833, which are binding.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim filed under State law. A copy of the notice or certificate shall be supplemented by, inter alia: (1) a map with a scale of not less than one-quarter inch to a mile showing the survey or protraction grids on which there will be depicted the location of the claim or site; and (2) a $5 service fee (nonreturnable) for each claim filed. Failure to file such instruments within the proper time period shall be deemed conclusively to constitute an abandonment of the mining claim, and it shall be void.

Where a mining claim is located after the enactment of the Federal Land Policy and Management Act of 1976 (Oct. 21, 1976), but before the date of promulgation of regulations implementing the statutory requirements of the Act relative to the recordation of mining claims, a regulation having retroactive effects may nonetheless be sustained in spite of such retroactivity if it is reasonable.

Elbert O. Jensen, 39 IBLA 62 (Jan. 17, 1979)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3822.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim, or the claim is deemed abandoned and void.

Dale C. Delor, 40 IBLA 88 (Mar. 22, 1979)

Jim Spicer, 42 IBLA 288 (Aug. 27, 1979)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1744 (Supp. 1978), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim located after Oct. 21, 1976, is void, and any later filing of the notice is invalid.

Lawrence A. Landry, 40 IBLA 212 (Apr. 10, 1979)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. A notice must be received and date stamped in the BLM office within the 90-day period to be timely filed.

M. J. Reeves, 41 IBLA 92 (June 4, 1979)

Carl Dowler, Roy Stewart, 44 IBLA 192 (Nov. 30, 1979)

Under 43 CFR 3833.2-1(b), the owner of unpatented mining claims located after Oct. 21, 1976, in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims prior to Dec. 31 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Blackburn Enterprises, 41 IBLA 115 (June 11, 1979)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located after Oct. 21, 1976, is not supported annually by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement there was no intent to abandon and that failure to file was an oversight.

Nuclear Power and Energy Co. and P-2, Inc., 41 IBLA 142 (June 14, 1979)

The owner of an unpatented mining claim relocated before Oct. 21, 1976, has until Oct. 21, 1979, in which to record his notice of location with BLM. However, if he elects to record in 1977, he must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following year, 1978, and each year thereafter, or the claim will be conclusively deemed to have been abandoned.

William L. Rucinski, 42 IBLA 56 (Aug. 1, 1979)

Where a person purchases a mining claim originally located on or before Oct. 21, 1976, the requirements of 43 CFR 3833.1-2(a) concerning claims located *prior* to the enactment of FLPMA apply, and the purchaser has until Oct. 21, 1979, to submit a copy of the official record of the notice of certificate of the claim filed under State law. In these circumstances, the 90-day filing deadline set out in 43 CFR 3833.1-2(b) for claims located *after* the enactment of FLPMA does not apply.

Warren E. Pierce, 42 IBLA 91 (Aug. 13, 1979)

Under 43 CFR 3833.2-1(a), the owner of unpatented mining claims located before Oct. 21, 1976, in the calendar year 1978, and recorded with the Bureau of Land Management (BLM) in 1977, must file affidavits of assessment work or notices of intention to hold the mining claims prior to Dec. 31 of each calendar year after recording, or the claims will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Clair R. Caldwell et al., 42 IBLA 139 (Aug. 16, 1979)

Under 43 CFR 3833.2-1, the owner of two unpatented mining claims, one located Sept. 16, 1976, and recorded with BLM May 3, 1977, and one located Feb. 1, 1977, and recorded with BLM Feb. 17, 1977, must have filed affidavits of assessment work or notices of intention to hold the mining claims for both claims prior to Dec. 31 of the calendar year, 1978, to prevent the claims from being conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Amanda Mining & Manufacturing Ass'n., 42 IBLA 144 (Aug. 16, 1979)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

John C. Schandelmeier, 42 IBLA 240 (Aug. 22, 1979)

Sec. 314 of the Federal Land Policy and Management Act of 1976 was enacted to establish a Federal recording system for mining claims to facilitate Federal land use planning and management. Failure to comply with the mandatory filing requirements constitutes abandonment of the claim and the land reverts to the status of public domain.

In the absence of a specific regulation or policy directive specifying the type of proof necessary for recordation, the Bureau of Land Management should liberally consider attempts by a mining claimant under sec. 314 of the Federal Land and Policy Management Act to record notice of a mining claim where proof of recording cannot be made and 30 U.S.C. § 38 (1976) is relied upon for holding the claim, and before rejecting a filing for such a claim, BLM should request further evidence from the claimant which it would consider satisfactory. Such evidence should include at a minimum the name the claim is and has been known by, the name and address of the claimant, an adequate description of the claim, the type of claim, the time of holding and working the claim to meet a State's statute of limitations and, if possible, the date of the origin of claimant's title and facts as to continuation of possession of the claim, and any other information available showing a chain of title to the claimant and bearing upon the possession and occupancy of the claim for mining purposes, and other information which the Bureau of Land Management deems essential to meet the purposes of the recordation provision.

Philip Sayer, 42 IBLA 296 (Aug. 27, 1979)

The regulation, 43 CFR 3833.2-1(b)(1), requiring evidence of assessment work to be filed prior to Dec. 31 of the year following location of the claim, is mandatory. Failure to comply therewith must result in a finding that the claim has been abandoned.

Donald L. Fulgham, 42 IBLA 338 (Aug. 30, 1979)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where appellants timely file for record an "amended" location notice, accompanied by the original location notice which is untimely on its face, the mining claim is properly deemed abandoned as to the original location, but not as to the "amended" claim if it is a relocation of the claim under the law.

Walter T. Paul, James E. Meyer, 43 IBLA 119 (Sept. 24, 1979)

Under 43 CFR 3833.2-1 the owner of unpatented mining claims located after Oct. 21, 1976, and recorded with the Bureau of Land Management in Nov. 1977, must have filed affidavits of assessment work or notices of intention to hold the mining claims prior to Dec. 31, 1978, to prevent the claims from being conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Roger Kuhn, 43 IBLA 182 (Sept. 28, 1979)

Since an amended notice merges with the original notice, the filing of the amended notice, for purposes of recordation under either sec. 8 of the Mining in the Parks Act, 90 Stat. 1342, 1343, 16 U.S.C. § 1907 (1976), or sec. 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 2769, 43 U.S.C. § 1744 (1976), together with such other information required by the applicable regulations, constitutes compliance with the recording requirements of those Acts.

R. Gail Tibbetts et al., 43 IBLA 210 (Oct. 5, 1979)
86 I.D. 538

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Dec. 14, 1977, and the filing fee therefor is not paid to BLM until Feb. 10, 1978, the recordation date of the notice is Feb. 10, 1978.

Joe B. Cashman, 43 IBLA 239 (Oct. 10, 1979)

Under 43 CFR 3833.2-1(c), the owner of unpatented mining claims located after Oct. 21, 1976, in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Where a claimant is not required to do any assessment work under the general mining laws, but is nevertheless required to file under 43 CFR 3833.1-2(c), he must file a notice of intention to hold the claims in lieu of an affidavit of assessment work performed.

Silvertip Exploration & Mining, 43 IBLA 250 (Oct. 10, (1979)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a), the owners of unpatented mining claims located before Oct. 21, 1976, and recorded with BLM in 1977, must file affidavits of assessment work or notices of intention to hold the mining claims prior to Dec. 31 of each calendar year following the calendar year of recording, or the claims will be conclusively deemed to have been abandoned under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. Mining claimants are not relieved of the requirement to timely file their documents when they mistakenly mailed them to the wrong city, as the documents cannot be considered as filed until they are received by the proper office of the Bureau of Land Management.

Dennis J. Mertz and Randy Mack, 43 IBLA 302 (Oct. 17, 1979)

Unpatented mining claims are properly deemed to have been abandoned and declared void where a claimant fails to comply with the requirements of the recording law by showing that a copy of the claimant's notice of intention to hold the claim (where an affidavit of assessment work is not filed), was filed in the local jurisdiction's office where notices of the location of the claims are recorded.

R. B. Wadleigh, 44 IBLA 11 (Nov. 6, 1979)

Decisions by BLM declaring mining claims abandoned and void for failure to file timely annual notices of intention to hold the claims or affidavits of assessment work will be vacated, notwithstanding the fact that BLM's records contain no such documents marked as timely filed, where the claimant is able to show that he mailed such documents to BLM and that it received them timely, and where it does not appear unlikely that BLM misplaced the documents or misconstrued their contents, owing to the absence of a numbering system and the similarity of the names of the claims to others.

Under 43 CFR 3833.2-1(a) and 3833.4(a), the owner of an unpatented mining claim located before Oct. 21, 1976, notice of which is recorded with BLM in the calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the claim on or before Dec. 30 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned.

E. Joe Swisher, 44 IBLA 44 (Nov. 19, 1979)

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

A copy of a recorded instrument which includes all of the information required by statute and regulation for the Federal recordation of mining claims and which is timely filed in the proper BLM office will be deemed sufficient to avert the conclusive presumption that the claims are abandoned and void, notwithstanding that the instrument is styled "Affidavit of Discovery," rather than "Notice" or "Certificate" of location.

William K. Moore, 44 IBLA 93 (Nov. 20, 1979)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Sept. 30, 1977, and the filing fee therefore is not paid to BLM until July 18, 1978, the recordation date of the notice of location is July 18, 1978. In the circumstances, the evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim must be filed in the proper BLM office on or before Oct. 22, 1979, pursuant to 43 CFR 3833.2-1(a). Duly promulgated regulations have the force and effect of law and are binding on the Department.

NRG Mining, Inc., 44 IBLA 126 (Nov. 27, 1979)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to file such notice shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

Raymond W. Quigley, 44 IBLA 250 (Dec. 19, 1979)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before the last day of the calendar year following the year the claim was recorded with BLM, the claim is properly deemed void.

Valda Waters, 44 IBLA 272 (Dec. 26, 1979)

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Faith C. Hartman, 44 IBLA 310 (Dec. 31, 1979)

REPEALERS

Repeal of the homestead laws renders moot the question of whether a private contestant can earn a preference right to enter by procuring the cancellation of a contestee's homestead entry for reasons not shown by Bureau of Land Management (BLM) records.

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (Jan. 5, 1978)

BLM has discretion to reject public sale applications pursuant to R.S. 2455, repealed by the Federal Land Policy and Management Act of 1976, effective Oct. 21, 1976, where the sale has not been held by this date. The filing of a public sale application creates no rights under sec. 701(a) of FLPMA which prevent BLM from exercising its discretion to dismiss the application.

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

The Small Tract Act, as amended, 43 U.S.C. § 682a et seq. (1970) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, and no land may be purchased under this Act. Where a State Office decision approves an application for purchase of a tract of land filed pursuant to the Small Tract Act in order to correct an error in a land description in another patent previously issued to appellants under the Small Tract Act, the decision will be reversed and the case remanded to the State Office for determination of whether the original patent may be corrected under sec. 316 of FLPMA, Correction of Conveyance Documents, 43 U.S.C. § 1746 (1970).

Richard O. Dale et al., 38 IBLA 175 (Dec. 6, 1978)

The Small Tract Act, 43 U.S.C. § 682a-e (1970), was repealed by sec. 702, Federal Land Policy and Management Act of 1976, Oct. 21, 1976, P.L. 94-579, 90 Stat. 2787. Renewal of a small tract lease was discretionary under the former Small Tract Act, so there was no right to renewal of a small tract lease preserved by sec. 701 of FLPMA. Any use or occupancy of the public domain granted subsequent to Oct. 21, 1976, must be under authority contained in FLPMA.

Arthur G. Lane, Jr., 38 IBLA 297 (Dec. 14, 1978)

Authority to dispose of land within Alaska railroad townsites under 43 U.S.C. § 975b (1970) was repealed by sec. 704(a) of the Federal Land Policy and Management Act of 1976.

Matanuska-Susitna Borough, Inc., 38 IBLA 362 (Dec. 29, 1978)

The Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), was repealed by sec. 706 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2793, and any use or occupancy of public land granted subsequent to the effective date of FLPMA, Oct. 21, 1976, must be issued under authority of that Act. In authorizing the Secretary to grant rights-of-way, FLPMA provides that the Secretary shall require the applicant to submit certain information relating to the right-of-way, and a State Office notice enumerating such requirements is consistent with FLPMA.

William J. Colman, 40 IBLA 180 (Apr. 3, 1979)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

REPEALERS--Continued

R.S. 2387, 2388 and 2389, 43 U.S.C. §§ 718-720 (1976), were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and any transfer of land for a townsite within a National Forest after the effective date of FLPMA, Oct. 21, 1976, must be made under authority of sec. 213 of that Act. The filing of an application under other statutes prior to the enactment of FLPMA does not constitute a valid existing right which would survive FLPMA.

Townsite of Liberty, 40 IBLA 317 (Apr. 30, 1979)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789, so that no rights under the townsite laws could be derived from occupancy commenced after Oct. 21, 1976.

Stu Mach, 43 IBLA 306 (Oct. 17, 1979)

RIGHTS-OF-WAY

An application for a communication site under 43 U.S.C. § 961 (1970) should be denied where utilization of an existing right-of-way is practical under 43 U.S.C. § 1763 (19__) and where the proposed site would have an adverse impact on the environment.

"Practical." Under 43 U.S.C. § 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

Under 43 CFR 2802.1-7(e), the charge for a right-of-way on public lands may be revised upon compliance with procedural requirements at any time 5 years or more from the date when the rate was initially established.

XYZ Television, Inc., 32 IBLA 317 (Sept. 30, 1977)

Under sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1764(g) (West Supp. 1977), charges for rights-of-way on public lands are in general to be paid annually rather than in advance for a longer period pursuant to 43 CFR 2802.1-7(a).

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

Although a right-of-way granted under the Act of Jan. 21, 1895, was previously subject to cancellation by the authorized officer for non-use pursuant to 43 CFR 2802.2-3, the Federal Land Policy and Management Act of 1976 provides that suspension or termination of a right-of-way requires an appropriate administrative proceeding pursuant to 5 U.S.C. § 554 (1970), except where the right-of-way provides by its terms that it will terminate in such event.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

Sec. 503 of the Federal Land Policy and Management Act of 1976 gives the Secretary discretionary authority with respect to issuance of rights-of-way. It would not be in public interest to grant appellant right-of-way because of inadequate water flow in Shoshone River and because of potential interference with planning for a modification of Buffalo Bill Dam. A decision by BLM, made in exercise of its discretion, to reject a water pipeline right-of-way application will be affirmed when the record shows the decision to be a reasoned analysis of factors involved made in due regard for public interest, and no sufficient reason to disturb decision is shown.

Broken H Ranch Co., 34 IBLA 182 (Mar. 21, 1978)

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. §§ 1761-1771 (West Supp. 1977). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a domestic water pipeline right-of-way will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

Stanley S. Leach, Roxanna M. Leach, 35 IBLA 53 (May 5, 1978)

Applications for rights-of-way on public lands pending on Oct. 22, 1976, are to be considered as applications under Title V of the Federal Land Policy and Management Act of 1976, but existing regulations will govern the administration of public lands to the extent practical until new regulations are promulgated.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1764(g) (West Supp. 1978), payments for use of right-of-way sites should be on an annual basis at the fair market value unless the annual payment would be less than $100. Therefore, although lands may be appraised for a longer future period of time, lump-sum payments for future years may not be demanded for amounts exceeding the statutory amount; instead charges for such amounts should be made on an annual basis.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

Donald B. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

The Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), was repealed by sec. 706 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2793, and any use or occupancy of public land granted subsequent to the effective date of FLPMA, Oct. 21, 1976, must be issued under authority of that Act. In authorizing the Secretary to grant rights-of-way, FLPMA provides that the Secretary shall require the applicant to submit certain information relating to the right-of-way, and a State Office notice enumerating such requirements is consistent with FLPMA.

William J. Colman, 40 IBLA 180 (Apr. 3, 1979)

RIGHTS-OF-WAY--Continued

Under the Federal Land Policy and Management Act of 1976, approval for a right-of-way for a timber access road is discretionary. A decision by BLM rejecting such an application will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Lowell Durham, 40 IBLA 209 (Apr. 10, 1979)

Pending applications for rights-of-way filed under the Acts of Feb. 15, 1901, and Mar. 4, 1911, shall be considered as applications under the Federal Land Policy and Management Act of 1976.

The granting of a right-of-way under FLPMA and the superseded Acts of Feb. 15, 1901, and Mar. 4, 1911, is within the Secretary's discretion and neither the filing of the application nor the existence of improvements earns appellant a right to the right-of-way. No rights vest in the applicant until the grant is approved by the Secretary. An application for a right-of-way is properly rejected where the land is in an interim conveyance to a Native Corporation.

"Public Lands." Land within an interim conveyance to a Native Corporation is no longer "public land" under the Federal Land Policy and Management Act nor subject to Bureau of Land Management jurisdiction to issue rights-of-way under that Act.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

Where, on appeal from the denial of a protest to the issuance of a right-of-way, an appellant does not show that issuance of the right-of-way was contrary to the law or applicable regulations, a decision rejecting the protest will be affirmed.

James W. Smith, 44 IBLA 275 (Dec. 26, 1979)

RULES AND REGULATIONS

As between two preference right applicants for land offered at public sale under the Isolated Tract Act, 43 U.S.C. § 1171 (1970), departmental regulation 43 CFR 2711.4(b)(2) continues in effect pursuant to 43 U.S.C.A. §§ 1713, 1740 (West Supp. 1977) and is strictly construed with regard to the deadline for making the required showing of fee title to contiguous land.

Although the Federal Land Policy and Management Act, 43 U.S.C.A. § 1701 et seq. (West Supp. 1977), repealed the Isolated Tract Act, 43 U.S.C. § 1171 (1970), where a public sale was held prior to Oct. 21, 1976, with the decision to hold the sale fully supported by land use plans, and there is an explicit finding that disposal criteria of the Federal Land Policy and Management Act have been met, final certificate and patent may be issued to the highest preference right bidder pursuant to 43 CFR 2711.4 et seq.

L. A. Gillette, 33 IBLA 182 (Dec. 21, 1977)

The Bureau of Land Management should suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976 where no regulations have been issued under which action may be taken and where there is no contrary policy directive.

Grace Cooley Coleman, Leota Ferrell, 35 IBLA 236 (May 26, 1978)

RULES AND REGULATIONS--Continued

Appellant's prior filings of mining claim documents with BLM do not relieve him of filing obligations imposed by sec. 314 of Federal Land Policy and Management Act and implementing regulations at 43 CFR Subpart 3833, which are binding.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

Where a mining claim is located after the enactment of the Federal Land Policy and Management Act of 1976 (Oct. 21, 1976), but before the date of promulgation of regulations implementing the statutory requirements of the Act relative to the recordation of mining claims, a regulation having retroactive effects may nonetheless be sustained in spite of such retroactivity if it is reasonable.

Elbert O. Jensen, 39 IBLA 62 (Jan. 17, 1979)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Sept. 30, 1977, and the filing fee therefore is not paid to BLM until July 18, 1978, the recordation date of the notice of location is July 18, 1978. In the circumstances, the evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim must be filed in the proper BLM office on or before Oct. 22, 1979, pursuant to 43 CFR 3833.2-1(a). Duly promulgated regulations have the force and effect of law and are binding on the Department.

NRG Mining, Inc., 44 IBLA 126 (Nov. 27, 1979)

SALES

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L. A. Gillette, 33 IBLA 182 (Dec. 21, 1977)

A decision to return an application for a public sale constitutes an action adverse to the applicant by an officer of the Bureau of Land Management and is thus appealable to the Board of Land Appeals under 43 CFR 4.410.

It is a proper exercise of discretion under the Federal Land Policy and Management Act of 1976 for the Bureau of Land Management to refuse to process and to reject applications for public sale pending on the date of the Act, even though it will continue to process bids and

SALES--Continued

preference right applications for a sale held prior to the Act.

United Park City Mines Co., 33 IBLA 358 (Jan. 18, 1978)

SERVICE CHARGES

The owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim filed under State law. A copy of the notice or certificate shall be supplemented by, *inter alia*: (1) a map with a scale of not less than one-quarter inch to a mile showing the survey or protraction grids on which there will be depicted the location of the claim or site; and (2) a $5 service fee (nonreturnable) for each claim filed. Failure to file such instruments within the proper time period shall be deemed conclusively to constitute an abandonment of the mining claim, and it shall be void.

Where a mining claim is located after the enactment of the Federal Land Policy and Management Act of 1976 (Oct. 21, 1976), but before the date of promulgation of regulations implementing the statutory requirements of the Act relative to the recordation of mining claims, a regulation having retroactive effects may nonetheless be sustained in spite of such retroactivity if it is reasonable.

Elbert O. Jensen, 39 IBLA 62 (Jan. 17, 1979)

WILDERNESS

Sec. 603 requires the Secretary to study all roadless areas of 5,000 acres or more and roadless islands with wilderness characteristics, and report his recommendations to the President as to the suitability or nonsuitability for preservation as wilderness of each such area. The Secretary may not make multiple-use tradeoffs in determining which public land areas qualify for wilderness study status.

For the purpose of BLM wilderness review, the term "roadless" means the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Sec. 603(a) requires that the Secretary report to the President by July 1, 1980, his recommendations as to the suitability for wilderness preservation of all formally identified natural or primitive areas designated prior to Nov. 1, 1975. Only those areas for which a notice of designation was published in the *Federal Register* are subject to this accelerated review and reporting requirement.

Sec. 603 of FLPMA does not apply to those areas of the Oregon and California and Coos Bay Wagon Road lands which are being managed for commercial timber production. Sec. 603 does apply to those areas not being managed for commercial timber production.

Prior to completion of the initial wilderness inventory and identification of the wilderness study areas, wilderness characteristics must be evaluated before the Secretary authorizes any new activities which would destroy wilderness qualities. Discretionary activities must be conditioned to prevent impairment of an area's potential for wilderness designation.

WILDERNESS--Continued

During the review of wilderness study areas, and until Congress acts on the President's recommendations, the Secretary must manage study areas to prevent impairment of their suitability for wilderness designation, with certain limited exceptions.

Management of sec. 603 study areas should be guided by the principle that developmental activity must be carefully regulated to insure it is compatible with wilderness, or that its imprint on wilderness is temporary.

Sec. 603 provides that mining, grazing, and mineral leasing may continue in wilderness study areas in the same manner and degree as on Oct. 21, 1976, even if impairment of an area's suitability for wilderness results.

The words "existing" and "manner and degree" in sec. 603(c) should be read in conjunction with the words "mining and grazing uses" to establish as a benchmark the physical and aesthetic impact a mining or grazing activity was having on an identified or potential wilderness study area on Oct. 21, 1976.

The existing mining use exception for mining and mineral leasing is limited geographically by the area of active development, and the logical adjacent continuation of the existing activity, not necessarily the boundary of the particular mining claim or mineral lease on which the operation is located.

When the impact from mining and grazing activities on a wilderness study area differs in manner and degree from the impact from such activity on Oct. 21, 1976, the Secretary must regulate the activity to prevent impairment of the area's suitability for preservation as wilderness.

The word "existing" in sec. 603(c) modifies "mineral leasing" in the same manner as it modifies "mining and grazing uses."

The Secretary is vested with the authority and responsibility to regulate all activities in wilderness study areas to prevent unnecessary and undue degradation and to afford environmental protection.

Areas under review for designation as wilderness remain available for appropriation under the mining laws, unless withdrawn for reasons other than protection of wilderness.

Interpretation of Sec. 603 of the Federal Land Policy and Management Act of 1976 - Bureau of Land Management (BLM) Wilderness Study, M-36910 (Feb. 13, 1979)
86 I.D. 89

Where the land embraced in a proposed oil and gas lease, to be issued subsequent to the enactment of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), has been identified as having wilderness characteristics and is being reviewed for possible preservation as wilderness pursuant to sec. 603 of that Act, it is proper for the Bureau of Land Management to require the execution of a special stipulation providing that consent to oil and gas operations will not be given if it is determined that such operations will impair the land's wilderness characteristics.

Where the land embraced in a proposed oil and gas lease has been identified as having wilderness characteristics and is being reviewed for possible preservation as wilderness pursuant to sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), it is proper for the Bureau of Land Management to require the execution of a special stipulation providing that oil and gas operations are subject to regulation where

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

the obvious aim is protecting the wilderness values inherent in the land.

Reserve Oil, Inc., et al., 42 IBLA 190 (Aug. 22, 1979)

FEDERAL METAL AND NONMETALLIC MINE SAFETY ACT

IMMINENT DANGER WITHDRAWAL ORDERS

Dismissal

Allegations of invalidity ab initio with respect to an imminent danger withdrawal order constitute a legally sufficient claim for relief under secs. 9 and 11 of the Act. 30 U.S.C. §§ 728, 730 (1970).

In the Matter of Kennecott Copper Corp. (Bingham Mine), 6 IBMA 288 (Sept. 15, 1976) 83 I.D. 329

Mootness

Abatement of a condition or practice which gave rise to a sec. 8(a) imminent danger withdrawal order does not render moot an application for review and annulment of such order under secs. 9 and 11 of the Act. 30 U.S.C. §§ 727(a), 728, 730 (1970).

In the Matter of Kennecott Copper Corp. (Bingham Mine), 6 IBMA 288 (Sept. 15, 1976) 83 I.D. 329

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT

(See also Surplus Property--if included in this Index.)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Paradox Oil and Gas Co., 22 IBLA 242 (Oct. 22, 1975)

Lands acquired for military purposes and subsequently disposed of as surplus property under the Federal Property and Administrative Services Act with a reservation of mineral rights to the United States are not subject to leasing under the Mineral Leasing Act for Acquired Lands. Oil and gas leases on such land may issue only under the provisions of the Federal Property and Administrative Services Act, which requires competitive bidding.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

FEES

(See also Accounts--if included in this Index.)

The Bureau of Land Management, in the exercise of its discretionary power to issue special land use permits, may establish special fee assessments for off-road vehicle (ORV) events.

The filing of an application for a special land use permit does not vest in the applicant any rights which preclude the Bureau of Land Management from requiring compliance with fee assessments adopted after the date of such filing but before issuance of the permit. In the absence of a provision that pending applications are to be exempted from the effects of the change in fee requirements, the applicant must comply with the fee assessment in effect at the time of the issuance of the special land use permit.

An applicant's special land use permit application does not fall within the "firm commitment" exception of a Bureau of Land Management instruction memorandum requiring revised fee assessments for off-road vehicle (ORV) permits where, subsequent to issuance and notice of the memorandum, the application is still in the preliminary processing stage requiring additional pre-event meetings, the applicant's acceptance of special stipulations, and further staff investigation and review before approval; however, the case will be remanded for further consideration where the District Office decision does not determine whether the application falls within the memorandum exception which permits the honoring of "negotiations which have progressed too far to negate."

Walt's Racing Ass'n, 18 IBLA 359 (Jan. 30, 1975)

Where notice of proposed rulemaking to change certain filing fees and to impose other charges has been published in the Federal Register, but no final rules have been published, the old schedule of fees will remain in effect until such time as the new rules are finally adopted, published, and made effective.

Arizona Public Service Co., 20 IBLA 120 (Apr. 28, 1975)

An applicant's special land use permit application does not fall within a Bureau of Land Management instruction memorandum exception which permits the honoring of past "negotiations which have progressed too far to negate," in lieu of the new revised fee assessment required by the memorandum for off-road vehicle events, where at the time of issuance and notice of the memorandum only preliminary negotiations had occurred which could still be negated.

Walt's Racing Ass'n, 22 IBLA 238 (Oct. 22, 1975)

"Rural Electrification Administration projects." A right-of-way holder is not excused from payment of rental under 43 CFR 2802.1-7(c), by virtue of holding an REA loan, where such holder is neither a cooperative or nonprofit organization.

Continental Telephone of the West, 35 IBLA 279 (June 2, 1978) 85 I.D. 188

43 CFR 4125.1-1(m)(3) provides that a grazing lease may be canceled for failure to make timely payment of grazing fees pursuant to 43 CFR 4125.1-1(h). The fact that cash was not available at the time payment was due; that executor of appellant estate relied upon his wife who failed to make timely payment; and that the wife was notified of a death in the family after the due date, does not justify the failure to pay the fee by the required date.

Reese Hennagan Estate, 36 IBLA 399 (Sept. 5, 1978)

FISH AND WILDLIFE SERVICE

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands

FISH AND WILDLIFE SERVICE--Continued

for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess et al., 27 IBLA 4 (Sept. 17, 1976)

FREEDOM OF INFORMATION ACT (Act of June 5, 1967)

Denial of request for USGS's estimates of present value of royalties and taxes based on proprietary and confidential information furnished by sources outside Government is legally supportable under exemptions (4) and (9) of Freedom of Information Act (FOIA) since release would be the same as releasing the proprietary and confidential information from which estimates were derived as well as the geological and geophysical data. Further, exemption (5) of FOIA may be used as a basis for protecting presale estimates of value for a tract on which no bids are received since this is part of Departmental's deliberative process of decisionmaking.

Freedom of Information Act, Appeal of Tenneco, M-36918
(Jan. 30, 1979) 86 I.D. 661

GEOLOGICAL SURVEY

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, the authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Hydrothermal Energy and Minerals, Inc., 18 IBLA 393
(Feb. 7, 1975) 82 I.D. 60

Hydrothermal Energy and Minerals, Inc., 19 IBLA 136
(Mar. 6, 1975)

Delta Funds, Inc., 19 IBLA 185 (Mar. 18, 1975)

An Oil and Gas Supervisor of the Geological Survey has authority to demand prejudgment interest based upon the failure of an oil and gas lessee to pay timely royalties owed to the Government, despite the fact that the Supervisor is an employee of the Executive Branch.

Where an oil and gas lessee appeals from a decision of an Oil and Gas Supervisor's determination that additional royalties are due to the Government, and simultaneously files a request for suspension of the ruling, which is granted by the Geological Survey "until further notice," prejudgment interest continues to accrue during the period of the suspension. This conclusion is premised on the doctrine that interest is compensation for delay in payment.

A demand by the Geological Survey for prejudgment interest for delayed payment of additional royalties owed to the Government is not necessarily unenforceable in

GEOLOGICAL SURVEY--Continued

the courts because it was not asserted as a counterclaim under Rule 13(a) of the Federal Rules of Civil Procedure.

Atlantic Richfield Co., 21 IBLA 98 (June 30, 1975)
82 I.D. 316

The Bureau of Land Management has no authority to make a determination of a known geothermal resources area; such authority rests with the Geological Survey.

Robert C. Harper, 24 IBLA 44 (Feb. 23, 1976)

Applications for phosphate prospecting permits are properly rejected by the Bureau of Land Management upon the basis of a determination by the Geological Survey that the lands applied for contain workable deposits of phosphate thus making the lands subject to the leasing provisions rather than the prospecting provisions of the Mineral Leasing Act. A review of the technical data relied upon by the Geological Survey in making its determination is not required where no evidence is submitted on appeal demonstrating error in that determination.

William E. Martin, 24 IBLA 271 (Mar. 30, 1976)

A determination by the United States Geological Survey that certain lands under a public sale application are valuable for various leasable minerals will not be disturbed in the absence of a clear showing by the applicant that such determination was improperly made.

The Kemmerer Coal Co., 26 IBLA 127 (July 30, 1976)

Where the Bureau of Land Management rejects a public sale application based on a determination by Geological Survey that certain lands encompassed by a public sale application contain workable coal deposits and Geological Survey's conclusion that the exercise of surface rights will unreasonably interfere with operations under the mineral leasing law, the case will be remanded for further consideration when the bare conclusion of the Geological Survey is unsupported by any facts and where there is a lack of evidence in the record to support such conclusion.

Edward H. Swartz, 27 IBLA 308 (Oct. 29, 1976)

Authority to make determinations of known geothermal resources area has been delegated to the Geological Survey by the Secretary of the Interior. Where such determination is based upon any or all of the evidentiary factors stated 30 U.S.C. § 1001(e) (1970) and appellant does not show that the determination is in error, the determination will stand.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

Authority to make determinations of known geothermal resource areas has been delegated to the Geological Survey by the Secretary of the Interior. Where such determination is based upon the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), and on appeal appellant fails to establish any error in a Geological Survey determination of a known geothermal resources area, the determination will stand.

The Geological Survey, as the delegate of the Secretary, has a continuous obligation to review the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), to determine whether an area should be designated as a known geothermal resources area. Such an obligation necessarily envisions the review of

GEOLOGICAL SURVEY--Continued

factors which individually may or may not afford a sufficient basis for the designation, but which taken collectively clearly establish a sufficient predicate for determination of a known geothermal resources area.

Nancy J. Moffitt et al., 30 IBLA 107 (May 2, 1977)

A determination of an Area Oil and Gas Supervisor, Geological Survey, that a subsequent joinder could not effectuate commitment of an oil and gas lease to a unit agreement prior to expiration of the lease is properly set aside by the Director, Geological Survey, as not being within the authority of the Area Oil and Gas Supervisor to determine.

Bruce Anderson, 30 IBLA 179 (May 19, 1977)

A known geothermal resources area determination must be based upon one or more of the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), and where the Geological Survey, as the delegate of the Secretary, makes such a determination based on all available data, regardless of whether such data were previously known, the determination will stand, absent a showing of error by one questioning the designation.

Nancy J. Moffitt et al. (On Reconsideration), 31 IBLA 191 (July 5, 1977)

Estoppel will not be applied against the Government when the sole basis for so doing is a statement by an applicant for a prospecting permit that a Geological Survey employee indicated that he could file the application in his own name, since this statement was not necessarily a misrepresentation, and since in any event the applicant had no right to rely on this statement because the Geological Survey is not the agency authorized to make representations as to the proper filing of prospecting applications.

Willadean Patton, Essex Minerals, Inc., National Bulk Carriers, Inc., 32 IBLA 350 (Oct. 21, 1977)

A mining plan submitted to the U.S. Geological Survey is properly classified a "new operation" as defined by 30 CFR 211.1(d)(1)(iii) where as of the date of its submission to the Department, the Department has not completed its environmental impact analysis involving the area in which the mining plan is located, nor has it, as of that date, commenced and expended substantial resources in the preparation or completion of that analysis.

Routt County Development, Ltd., 33 IBLA 130 (Dec. 19, 1977)

The Geological Survey is the Secretary's technical expert in matters concerning coal permits and leases and the Secretary is entitled to rely on its reasoned analysis.

Where a request to modify a coal lease by adding acreage to it is rejected by the BLM solely on the basis of conclusory statement of the Geological Survey that the area applied for is capable of being developed as part of an independent operation and the factual basis for that conclusion does not appear in the record, the decision will be set aside and the case remanded for the compilation of a more complete record and readjudication of the request.

Intermountain Exploration Co., 35 IBLA 15 (May 4, 1978)

GEOLOGICAL SURVEY--Continued

A determination by the United States Geological Survey that certain lands in an application for sale under the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), are underlain with coal, and that sale of the surface rights would interfere with the operation of the Mineral Leasing Act of 1920, will not be disturbed in the absence of a clear showing by the applicant that the determination was improperly made.

Bace Cox, 38 IBLA 340 (Dec. 20, 1978)

It is not proper to deny a creditable request for approval of unavoidable delay time under sec. 16 of the Santa Ynez Unit Agreement, even though the Geological Survey considers the unit agreement extended by diligent drilling operations.

Exxon Co., U.S.A., 41 IBLA 118 (June 13, 1979)

The U.S. Geological Survey is the technical expert of the Department in matters concerning geologic evaluation of oil and gas lease production, and the Secretary is entitled to rely on the Survey's determinations, as to the extent of the participating area of a unit, absent a clear showing of error.

Amoco Production Co., 41 IBLA 348 (July 11, 1979)

Generally the Geological Survey may reconsider and modify or revoke its own decision in the absence of an appeal to the Board of Land Appeals. However, the filing of an appeal to the Board removes the matter from the jurisdiction of Survey pending disposition of the appeal.

Where Geological Survey and one of two parties to a compulsory unitization of two outer continental shelf oil and gas leases request a remand of a Survey decision for further consideration, and certain issues raised on appeal would appropriately be better first considered by Survey, the case will be remanded to Survey. In the circumstances, a request to stay implementation of Survey's prior decision may be granted by the Board unless and until Survey acts upon the request when it reconsiders the case.

Sun Oil Co., 42 IBLA 254 (Aug. 23, 1979)

Where the U.S. Geological Survey has determined from available geologic and other data that a participating area of 1,000 acres is the proper size for a producing well under an approved unit agreement, this Board may rely upon reports of the Survey setting forth the conclusions reached without examining the technical data upon which the reports were based.

A determination by the U.S. Geological Survey that certain land is within the participating area of a producing oil or gas well established pursuant to an approved unit agreement will not be set aside where it is not arbitrary or capricious and is supported by competent evidence, and the appellant has not demonstrated by a clear and definite showing that the determination was in error.

Margaret E. Obie et al., 43 IBLA 326 (Oct. 29, 1979)

GEOTHERMAL LEASES

GENERALLY

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Austral Oil Co., Inc., 21 IBLA 243 (Aug. 11, 1975)

Land may properly be declared to be in a known geothermal resources area only upon a finding by the Geological Survey of sufficient competitive interest, where such interest, in the opinion of the Geological Survey, would engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated resources are good enough to warrant expenditures for that purpose.

Robert C. Harper, 24 IBLA 44 (Feb. 23, 1976)

Where the reason given for the partial rejection of a noncompetitive geothermal lease application is that the Environmental Analysis Record has recommended against leasing the lands because they lie within an area associated with historic trails, and the records indicate that the State Office has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether the lands should be leased with protective stipulations.

Richard C. Hoefle, 24 IBLA 181 (Mar. 16, 1976)

Kirk Greene, 24 IBLA 262 (Mar. 29, 1976)

It is proper to afford a geothermal lease applicant the benefit of a regulation, adopted after the filing of his application, absent the impairment of third party rights and adverse impact on the interests of the United States. Where a geothermal lease regulation requires the filing of a compliance bond as a condition precedent to issuance of a lease, and that regulation is amended during the pendency of an application to require such a bond only as a condition precedent to entry on the leased lands, the holder of the application may be granted a lease under the amended requirement, if all else be regular.

Christopher A. Marks, 26 IBLA 84 (July 19, 1976)

Where an issue which gives rise to an appeal is mooted during the pendency of the appeal, the appeal will not be dismissed where the priority of the application is dependent upon the correctness of the original decision.

Where an oil and gas lease offeror files a partial withdrawal of lands described in her application during the pendency of an appeal from a decision rejecting her offer in its entirety, the withdrawal is effective *ex instanti* when filed, and may not be ignored simply on the basis that it was permissible to have included those lands in the application.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17 1976)

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive geothermal steam leases and the Secretary is entitled to rely on its reasoned analysis.

Getty Oil Co., 27 IBLA 269 (Oct. 26, 1976)

GEOTHERMAL LEASES--Continued

GENERALLY--Continued

A decision rejecting a geothermal application in part may be set aside and the case remanded where the appellant requests an opportunity to consult with the Bureau of Reclamation which objected to issuance of the lease, and the decision itself notes that Bureau's objection as the basis for the decision, but there is no explanation of why the leasing proposal would interfere with some other Federal function or would be contrary to the public interest pursuant to 43 CFR 3201.1-2.

Thermal Resources, Inc., 28 IBLA 361 (Feb. 2, 1977)

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the finding of that Department that geothermal leasing for such lands is inimical to the public interest.

William A. Hendrey, 33 IBLA 71 (Dec. 5, 1977)

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the requirement of that Department that the particular national forest lands so leased be subject to nonsurface occupancy stipulations.

Alaska Pacific Lumber Co., 36 IBLA 68 (July 12, 1978)

Decisions by BLM to refrain from leasing certain lands for geothermal resources will be set aside and the cases remanded where a lease applicant shows on appeal that such decisions failed to take into account relevant considerations of public interest.

California Geothermal, Inc., 37 IBLA 172 (Oct. 10, 1978)

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-03 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

A stipulation requiring an offeror under a geothermal resources lease to provide a certified statement by a qualified archaeologist concerning the existence of archaeological values on lands to be disturbed by the lessee and to accept reasonable conditions of use for the protection of such areas and which requires the lessee to bear the cost of salvaging objects of antiquity is reasonable and will be upheld.

Western Oil Shale Corp., 41 IBLA 105 (June 11, 1979)

It is proper to reject an application for a geothermal resources lease where equitable title to the resource in issue is doubtful.

Dennis Potts, 42 IBLA 355 (Sept. 11, 1979)

GEOTHERMAL LEASES--Continued

ACREAGE LIMITATIONS

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Robert G. Lynn, 19 IBLA 167 (Mar. 17, 1975)

Where an application for a noncompetitive geothermal steam lease includes 2,598.98 acres of land, thereby exceeding the 2,560 acre limitation by 38.98 acres and the applicant, under 43 CFR 3210.2-1(c) is required to include all available lands within a section, the rule of approximation operates to allow the excess when the excess is smaller than the amount by which the area would be less than 2,560 acres if the irregular subdivision, in this case a section, were excluded.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17, 1976)

The special rule of approximation for geothermal lease offers is applied by subtracting from the total acreage of the offer the acreage of the irregular subdivision which caused the excess acreage. Where a geothermal lease offer describes four complete sections and the area embraced in the application exceeds the acreage limit because one or more of the sections is irregular, the offer may be considered if deletion of the irregular section (or one of them if there is more than one) would cause an acreage deficiency (acreage limit less acreage described in the offer) greater than the excess acreage resulting from inclusion of the section.

Nelson B. Hunt, 27 IBLA 365 (Nov. 4, 1976)

APPLICATIONS

Generally

An application for a lease of geothermal resources within a riverbed not under jurisdiction of the United States is properly rejected.

Milan S. Papulak, 19 IBLA 139 (Mar. 7, 1975)

An application for a noncompetitive lease of geothermal resources in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications, or a reference by serial number to a record in which such statement previously had been filed.

E & B Investments, Inc., 19 IBLA 141 (Mar. 7, 1975)

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Lands within a known geothermal resources area (KGRA) are not available for noncompetitive leasing. Where lands included in a geothermal lease application are determined to be within a KGRA, and such determination is made after the filing of the application but before the issuance of a lease, or amendment thereto, pursuant to such application, the application must be rejected as to such lands.

Robert G. Lynn, 19 IBLA 167 (Mar. 17, 1975)

GEOTHERMAL LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where the applicant for a noncompetitive lease of geothermal resources is not the sole party in interest and the application is not accompanied by separate statements signed by each of the interested parties, setting forth the nature of the agreement between them and their qualifications to hold such interests in geothermal resources leases, the application must be rejected.

California Geothermal, Inc., 19 IBLA 268 (Apr. 7, 1975)

An application for a noncompetitive geothermal lease must be rejected with respect to land described in the application which, although not within a known geothermal resources area (KGRA) at the time the application is filed, is designated as being within a KGRA before a lease is issued for said land.

Baumgartner Cos., 21 IBLA 133 (July 14, 1975)

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Austral Oil Co., Inc., 21 IBLA 243 (Aug. 11, 1975)

A noncompetitive geothermal resources lease application must include all available land within a surveyed or protracted section. If it fails to include a metes and bounds description of a nonnavigable riverbed within the section, the application is properly rejected as to the whole of the section.

Charles J. Heringer, 21 IBLA 254 (Aug. 11, 1975)

Where a noncompetitive geothermal resources lease application indicates that the applicant is not the sole party in interest and is not accompanied by the information required by 43 CFR 3202.2-5 with respect to the nature of the agreement between the parties in interest and their qualifications, the offer must be rejected even if the applicant is, in fact, contrary to the information disclosed on the lease application, the sole party in interest, where such fact is unknown to the BLM.

An application for a noncompetitive lease of geothermal resources in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications or a reference by serial number to a record in which such statement previously had been filed.

Central Nevada Corp., 21 IBLA 308 (Aug. 14, 1975)

Until a final authoritative judicial determination is made of the title to geothermal resources in lands patented with a reservation of all minerals to the United States, a geothermal lease application which omits such patented lands from a section will not be considered in compliance with 43 CFR 3210.2-1(c) requiring all available lands in a section to be described in the lease application. However, the application may be suspended as to that section, rather than rejected, until the title question is resolved.

Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

GEOTHERMAL LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

When the Bureau of Land Management rejects geothermal lease offers on the mistaken basis that the lands embraced within the offers are situated within a particular critical natural area excluded from leasing, but in fact the lease offers are for lands not within that critical natural area but may be in another, the cases must be remanded for further consideration because the decisions fail to disclose a proper basis for rejection of the lease offers.

Kirk Greene, 24 IBLA 113 (Mar. 1, 1976)

When the Bureau of Land Management rejects geothermal lease offers on the basis that the lands embraced within the offers are situated within a critical natural area excluded from leasing, but the record indicates the basis for rejection may be that the lands applied for are associated with historic trails where leasing activity has been approved subject to protective stipulations, the decisions will be set aside and the cases remanded for further clarification and consideration by the Bureau to determine whether the lands should be leased subject to protective stipulations.

Christian F. Murer, 24 IBLA 383 (Apr. 29, 1976)

Where an issue which gives rise to an appeal is mooted during the pendency of the appeal, the appeal will not be dismissed where the priority of the application is dependent upon the correctness of the original decision.

Where an application for a noncompetitive geothermal steam lease includes 2,598.98 acres of land, thereby exceeding the 2,560 acre limitation by 38.98 acres and the applicant, under 43 CFR 3210.2-1(c) is required to include all available lands within a section, the rule of approximation operates to allow the excess when the excess is smaller than the amount by which the area would be less than 2,560 acres if the irregular subdivision, in this case a section, were excluded.

Where an oil and gas lease offeror files a partial withdrawal of lands described in her application during the pendency of an appeal from a decision rejecting her offer in its entirety, the withdrawal is effective *eo instanti* when filed, and may not be ignored simply on the basis that it was permissible to have included those lands in the application.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17, 1976)

A decision by the Bureau of Land Management to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands lie within an area associated with historic trails, and the records indicate that the Bureau of Land Management has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether these lands should be leased with protective stipulations.

When the reason given by the Bureau of Land Management for the rejection of noncompetitive geothermal lease applications is that the lands lie within a critical natural area, but the Environmental Analysis Record recommendations to exclude lands from leasing have not been uniformly followed and the Record itself describes various protective measures which would mitigate adverse environmental impact, the decisions will be remanded to determine whether these lands should be leased with protective stipulations.

When the Bureau of Land Management rejects geothermal lease applications on the mistaken basis that the lands are situated within a particular critical natural area excluded from leasing, the cases must be remanded for further consideration because the decisions fail to disclose a proper basis for rejection.

Southern Union Production Co., 27 IBLA 54 (Sept. 23, 1976)

Where a noncompetitive geothermal lease application describes all the lands in a certain section by legal subdivisions and the section contains an available unsurveyed lake bed, the lease offer will be rejected as to such section because of the applicant's failure to describe the unsurveyed lake bed by metes and bounds as required by 43 CFR 3203.4(b).

Lamar Hunt, 27 IBLA 397 (Nov. 5, 1976)

Where an application for a geothermal resource lease is filed for all the land available within a surveyed or protracted section, as required by regulation, but the application is then reduced to less than all such land by voluntary withdrawal, the offer is properly rejected.

Chevron Oil Co., 28 IBLA 386 (Feb. 4, 1977)

A geothermal lease application is properly rejected to the extent that it includes land which has been reconveyed to the United States but which has only been opened to applications under the nonmineral public land laws.

Chevron Oil Co., 32 IBLA 275 (Sept. 27, 1977)

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the finding of that Department that geothermal leasing for such lands is inimical to the public interest.

William A. Hendrey, 33 IBLA 71 (Dec. 5, 1977)

Where lands in issue formerly were included in a now terminated geothermal lease, and no *Federal Register* listing of units for re-leasing had been made as of time appellant filed her noncompetitive geothermal lease application, BLM properly rejected her offer in accordance with 43 CFR 3211.1. Appellant's argument that reasonable time for such listing had passed from termination of former lease to filing of appellant's offer does not state an exception to requirements of 43 CFR 3211.1.

Laura J. Spangler, 35 IBLA 29 (May 5, 1978)

GEOTHERMAL LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the requirement of that Department that the particular national forest lands so leased be subject to nonsurface occupancy stipulations.

Alaska Pacific Lumber Co., 36 IBLA 88 (July 12, 1978)

A geothermal lease offer filed for lands which are withdrawn for the Department of Defense from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, is properly rejected. Where an offer to lease lands for geothermal resources cannot be accepted because the lands are withdrawn and not available for leasing, the offer will be rejected and may not be held in suspense until the land may become available for such leasing.

Sulphur River Exploration, Inc., 36 IBLA 307 (Aug. 21, 1978)

A decision rejecting an application for a geothermal resources lease because the United States does not own the mineral resource will be set aside and the case remanded when the land status records reflect ostensible legal title in the Federal Government.

Dennis Potts, 36 IBLA 329 (Aug. 28, 1978)

A decision by BLM to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands possess a high visual quality, and neither the EAR nor the remaining documents of record clearly bear out such a determination and where it appears that BLM has issued leases on adjacent lands, the decisions rejecting the leases will be set aside and the cases remanded for further consideration to determine whether the lands should be leased with protective stipulations.

California Geothermal, Inc., 37 IBLA 172 (Oct. 10, 1978)

An application for lease of geothermal resources within a wildlife refuge is properly rejected because leasing of such areas is specifically prohibited by the Geothermal Resources Act and 43 CFR 3201.1-6.

Antoinette Carter, 37 IBLA 222 (Oct. 12, 1978)

It is proper to reject an application for a geothermal resources lease where equitable title to the resource in issue is doubtful.

Dennis Potts, 42 IBLA 355 (Sept. 11, 1979)

GEOTHERMAL LEASES--Continued

APPLICATIONS--Continued

Amendments

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

Edward B. Towne, 21 IBLA 304 (Aug. 14, 1975)

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in such an application received after the close of the monthly filing period in which the initial application was filed will not be allowed.

Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

Description

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

Edward B. Towne, 21 IBLA 304 (Aug. 14, 1975)

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in such an application received after the close of the monthly filing period in which the initial application was filed will not be allowed.

Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

ASSIGNMENTS OR TRANSFERS

A geothermal lease which has automatically terminated by operation of law for failure to submit the annual rental timely may be reinstated only where the lessee shows that the late payment of the rental was either justified or not due to a lack of reasonable diligence. The fact that an assignment application is pending does not justify a late payment of the rental either by the lessee or by the prospective assignee.

Supron Energy Corp., 40 IBLA 68 (Mar. 16, 1979)

BONDS

It is proper to afford a geothermal lease applicant the benefit of a regulation, adopted after the filing of his application, absent the impairment of third party rights and adverse impact on the interests of the United States. Where a geothermal lease regulation requires the filing of a compliance bond as a condition precedent to issuance of a lease, and that regulation is amended during the pendency of an application to

GEOTHERMAL LEASES--Continued

BONDS--Continued

require such a bond only as a condition precedent to entry on the leased lands, the holder of the application may be granted a lease under the amended requirement, if all else be regular.

Christopher A. Marks, 26 IBLA 84 (July 19, 1976)

A regulation which provides that coverage of nationwide oil and gas bond in force at the effective date of the regulation may be expanded by a rider to include geothermal resources leases does not permit a replacement nationwide oil and gas bond executed after the effective date of the regulation to be so modified to include geothermal resources operations.

Mono Power Co., 37 IBLA 100 (Sept. 28, 1978)

COMPETITIVE LEASES

Sec. 4 of Geothermal Steam Act of 1970 authorizes competitive bidding as sole basis for issuance of geothermal leases for lands determined to be within a KGRA.

Sec. 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during Jan. 1974 filing period, and State Office rejections of appellant's Jan. 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 18 IBLA 393 (Feb. 7, 1975) 82 I.D. 60

Sec. 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during Jan. 1974 filing period, and State Office rejections of appellant's Jan. 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 19 IBLA 136 (Mar. 6, 1975)

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a KGRA.

Charles J. Heringer, 21 IBLA 254 (Aug. 11, 1975)

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Anadarko Production Co., 24 IBLA 132 (Mar. 4, 1976)

Caroline L. Hunt, 26 IBLA 178 (Aug. 9, 1976)

GEOTHERMAL LEASES--Continued

COMPETITIVE LEASES--Continued

Sec. 4 of the Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands within a known geothermal resource area under regulations formulated by the Secretary of the Interior. Where the Department has promulgated regulations pursuant to this section which provides the Secretary's authorized officer with the reserved right to reject any and all bids submitted for a competitive geothermal lease sale, and that reserved right is publicized in the sale notice, the Government is not obligated to accept any bid which might be considered inadequate.

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive geothermal steam leases and the Secretary is entitled to rely on its reasoned analysis.

Getty Oil Co., 27 IBLA 269 (Oct. 26, 1976)

30 U.S.C. § 1003 (1970) authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-03 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

On appeal from a determination of United States Geological Survey under 30 U.S.C. §§ 1002-03 (1976), rejecting offeror's competitive geothermal lease bid as too low, offeror has the burden of showing that the rejection is arbitrary and capricious and that Survey has no rational basis for rejection of the bid.

While the Department has discretion as to whether to grant a hearing to an offeror whose high bid is rejected for a competitive geothermal lease, a hearing is not in the public interest where offeror has not explained a procedure in which particular facts could be effectively utilized in an alternative formula for computing minimum bids.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

CONSENT OF AGENCY

The directives of 30 U.S.C. § 1014(b) (1970) and 43 CFR 3201.1-3 are mandatory, and unless the Forest Service gives its consent to the geothermal leasing of the national forest lands in dispute, the Department of the Interior may not issue leases on those lands.

Earth Power Corp. et al., 32 IBLA 357 (Oct. 21, 1977)

DESCRIPTION OF LAND

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

Edward B. Towne, 21 IBLA 304 (Aug. 14, 1975)

GEOTHERMAL LEASES--Continued

DISCRETION TO LEASE

Where the reason given for the partial rejection of a noncompetitive geothermal lease application is that the Environmental Analysis Record has recommended against leasing the lands because they lie within an area associated with historic trails, and the records indicate that the State Office has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether the lands should be leased with protective stipulations.

Richard C. Hoefle, 24 IBLA 181 (Mar. 16, 1976)

Kirk Greene, 24 IBLA 262 (Mar. 29, 1976)

An exercise of the Secretary's discretion to refrain from issuing a geothermal lease for a given tract of land is neither arbitrary nor capricious where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest. In such a situation, the Board will not ordinarily substitute its independent judgment for that of the technical experts employed by the Department to make recommendations within their field of expertise.

Eason Oil Co., Robert G. Lynn, 24 IBLA 221 (Mar. 24, 1976)

A decision by the Bureau of Land Management to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands lie within an area associated with historic trails, and the records indicate that the Bureau of Land Management has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether these lands should be leased with protective stipulations.

When the reason given by the Bureau of Land Management for the rejection of noncompetitive geothermal lease applications is that the lands lie within a critical natural area, but the Environmental Analysis Record recommendations to exclude lands from leasing have not been uniformly followed and the Record itself describes various protective measures which would mitigate adverse environmental impact, the decisions will be remanded to determine whether these lands should be leased with protective stipulations.

When the Bureau of Land Management rejects geothermal lease applications on the mistaken basis that the lands are situated within a particular critical natural area excluded from leasing, the cases must be remanded for further consideration because the decisions fail to disclose a proper basis for rejection.

Southern Union Production Co., 27 IBLA 54 (Sept. 23, 1976)

Issuance of a lease for geothermal resources is within the discretion of the Secretary of the Interior. Thus, the filing of an offer for a noncompetitive lease for geothermal steam resources creates no vested rights in the offeror and the offer must be rejected if the lands are found to be within a known geothermal resources area at any time prior to the issuance of a lease.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the finding of that Department that geothermal leasing for such lands is inimical to the public interest.

William A. Hendrey, 33 IBLA 71 (Dec. 5, 1977)

An exercise of the Secretary's discretion to refrain from issuing a geothermal lease for a given tract of land will generally be upheld where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest. In such a situation, the Board will not ordinarily substitute its independent judgment for that of the technical experts employed by the Department to make recommendations within their field of expertise.

Cortez, Inc., 34 IBLA 239 (Mar. 28, 1978)

An exercise of the Secretary's discretion by Bureau of Land Management State Office to refrain from issuing a geothermal lease for a given tract of land will be sustained where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest.

The Anschutz Corp., 34 IBLA 270 (Mar. 31, 1978)

Where lands in issue formerly were included in a now terminated geothermal lease, and no *Federal Register* listing of units for re-leasing had been made as of time appellant filed her noncompetitive geothermal lease application, BLM properly rejected her offer in accordance with 43 CFR 3211.1. Appellant's argument that reasonable time for such listing had passed from termination of former lease to filing of appellant's offer does not state an exception to requirements of 43 CFR 3211.1.

Laura J. Spangler, 35 IBLA 29 (May 5, 1978)

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will be generally upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land will not be adversely affected as BLM described in rejecting the application.

Oxy Petroleum, Inc., 36 IBLA 59 (June 30, 1978)

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the requirement of that Department that the particular national forest lands so leased be subject to nonsurface occupancy stipulations.

Alaska Pacific Lumber Co., 36 IBLA 88 (July 12, 1978)

A decision by BLM to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands possess a high visual quality, and neither the EAR nor the remaining documents of record clearly bear out such a determination and where it appears that BLM has issued leases on adjacent lands, the decisions rejecting the leases will be set aside and the cases remanded for further consideration to determine whether the lands should be leased with protective stipulations.

California Geothermal, Inc., 37 IBLA 172 (Oct. 10, 1978)

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-03 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

On appeal from a determination of United States Geological Survey under 30 U.S.C. §§ 1002-03 (1976), rejecting offeror's competitive geothermal lease bid as too low, offeror has the burden of showing that the rejection is arbitrary and capricious and that Survey has no rational basis for rejection of the bid.

While the Department has discretion as to whether to grant a hearing to an offeror whose high bid is rejected for a competitive geothermal lease, a hearing is not in the public interest where offeror has not explained a procedure in which particular facts could be effectively utilized in an alternative formula for computing minimum bids.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

It is proper to reject an application for a geothermal resources lease where equitable title to the resource in issue is doubtful.

Dennis Potts, 42 IBLA 355 (Sept. 11, 1979)

ENVIRONMENTAL PROTECTION

Generally

Where the reason given for the partial rejection of a noncompetitive geothermal lease application is that the Environmental Analysis Record has recommended against leasing the lands because they lie within an area associated with historic trails, and the records indicate that the State Office has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether the lands should be leased with protective stipulations.

Richard C. Hoefle, 24 IBLA 181 (Mar. 16, 1976)

Kirk Greene, 24 IBLA 262 (Mar. 29, 1976)

An exercise of the Secretary's discretion to refrain from issuing a geothermal lease for a given tract of land is neither arbitrary nor capricious where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest. In such a situation, the Board will not ordinarily substitute its independent judgment for that of the technical experts employed by the Department to make recommendations within their field of expertise.

Basco Oil Co., Robert G. Lynn, 24 IBLA 221 (Mar. 24, 1976)

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands lie within an area associated with historic trails, and the records indicate that the Bureau of Land Management has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether these lands should be leased with protective stipulations.

When the reason given by the Bureau of Land Management for the rejection of noncompetitive geothermal lease applications is that the lands lie within a critical natural area, but the Environmental Analysis Record recommendations to exclude lands from leasing have not been uniformly followed and the Record itself describes various protective measures which would mitigate adverse environmental impact, the decisions will be remanded to determine whether these lands should be leased with protective stipulations.

When the Bureau of Land Management rejects geothermal lease applications on the mistaken basis that the lands are situated within a particular critical natural area excluded from leasing, the cases must be remanded for further consideration because the decisions fail to disclose a proper basis for rejection.

Southern Union Production Co., 27 IBLA 54 (Sept. 23, 1976)

An exercise of the Secretary's discretion to refrain from issuing a geothermal lease for a given tract of land will generally be upheld where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest. In such a situation, the Board will not ordinarily substitute its independent judgment for that of the technical experts employed by the Department to make recommendations within their field of expertise.

Cortez, Inc., 34 IBLA 239 (Mar. 28, 1978)

An exercise of the Secretary's discretion by Bureau of Land Management State Office to refrain from issuing a geothermal lease for a given tract of land will be sustained where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest.

The Anschutz Corp., 34 IBLA 270 (Mar. 31, 1978)

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will be generally upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land will not be adversely affected as BLM described in rejecting the application.

Oxy Petroleum, Inc., 36 IBLA 59 (June 30, 1978)

GEOTHERMAL LEASES--Continued

ENVIRONMENTAL PROTECTION--Continued

Generally--Continued

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands possess a high visual quality, and neither the EAR nor the remaining documents of record clearly bear out such a determination and where it appears that BLM has issued leases on adjacent lands, the decisions rejecting the leases will be set aside and the cases remanded for further consideration to determine whether the lands should be leased with protective stipulations.

California Geothermal, Inc., 37 IBLA 172 (Oct. 10, 1978)

FIRST-QUALIFIED APPLICANT

Where a noncompetitive geothermal resources lease application indicates that the applicant is not the sole party in interest and is not accompanied by the information required by 43 CFR 3202.2-5 with respect to the nature of the agreement between the parties in interest and their qualifications, the offer must be rejected even if the applicant is, in fact, contrary to the information disclosed on the lease application, the sole party in interest, where such fact is unknown to the BLM.

An application for a noncompetitive lease of geothermal resources in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications or a reference by serial number to a record in which such statement previously had been filed.

Central Nevada Corp., 21 IBLA 308 (Aug. 14, 1975)

HEARINGS

While the Department has discretion as to whether to grant a hearing to an offeror whose high bid is rejected for a competitive geothermal lease, a hearing is not in the public interest where offeror has not explained a procedure in which particular facts could be effectively utilized in an alternative formula for computing minimum bids.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

KNOWN GEOTHERMAL RESOURCES AREA

There is no authority for a State Director, Bureau of Land Management to make a determination of a known geothermal resources area. Instead, that authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Sec. 4 of Geothermal Steam Act of 1970 authorizes competitive bidding as sole basis for issuance of geothermal leases for lands determined to be within a KGRA.

Sec. 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during Jan. 1974 filing period, and

GEOTHERMAL LEASES--Continued

KNOWN GEOTHERMAL RESOURCES AREA--Continued

State Office rejections of appellant's Jan. 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 18 IBLA 353 (Feb. 7, 1975) 82 I.D. 60

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, the authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Sec. 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during Jan. 1974 filing period, and State Office rejections of appellant's Jan. 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 19 IBLA 136 (Mar. 6, 1975)

Lands within a known geothermal resources area (KGRA) are not available for noncompetitive leasing. Where lands included in a geothermal lease application are determined to be within a KGRA, and such determination is made after the filing of the application but before the issuance of a lease, or amendment thereto, pursuant to such application, the application must be rejected as to such lands.

Robert G. Lynn, 19 IBLA 167 (Mar. 17, 1975)

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, that authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Delta Funds, Inc., 19 IBLA 185 (Mar. 18, 1975)

An application for a noncompetitive geothermal lease must be rejected with respect to land described in the application which, although not within a known geothermal resources area (KGRA) at the time the application is filed, is designated as being within a KGRA before a lease is issued for said land.

Baumgartner Cos., 21 IBLA 133 (July 14, 1975)

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, that authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of

GEOTHERMAL LEASES--Continued

KNOWN GEOTHERMAL RESOURCES AREA--Continued

geothermal resources leases for lands determined to be within a KGRA.

Charles J. Heringer, 21 IBLA 254 (Aug. 11, 1975)

The Bureau of Land Management has no authority to make a determination of a known geothermal resources area; such authority rests with the Geological Survey.

Land may properly be declared to be in a known geothermal resources area only upon a finding by the Geological Survey of sufficient competitive interest, where such interest, in the opinion of the Geological Survey, would engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated resources are good enough to warrant expenditures for that purpose.

It is unnecessary for the Secretary to consult with men experienced in the exploitation of geothermal steam to make a determination of a known geothermal resources area. It is sufficient that he entertain the opinion that any or all of the elements delineated in 30 U.S.C. § 1001(e) (1970), would engender a belief in such men that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

Robert C. Harper, 24 IBLA 44 (Feb. 23, 1976)

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Anadarko Production Co., 24 IBLA 132 (Mar. 4, 1976)

Caroline L. Hunt, 26 IBLA 178 (Aug. 9, 1976)

It is unnecessary for the Secretary, or his delegate, to consult with men experienced in the exploitation of geothermal steam to make a determination of a known geothermal resources area. It is sufficient that he entertain the opinion that any or all of the elements delineated in 30 U.S.C. § 1001(e) (1970), would engender a belief in such men that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

Authority to make determinations of known geothermal resources area has been delegated to the Geological Survey by the Secretary of the Interior. Where such determination is based upon any or all of the evidentiary factors stated 30 U.S.C. § 1001(e) (1970) and appellant does not show that the determination is in error, the determination will stand.

30 U.S.C. § 1003 (1970) authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Issuance of a lease for geothermal resources is within the discretion of the Secretary of the Interior. Thus, the filing of an offer for a noncompetitive lease for geothermal steam resources creates no vested rights in the offeror and the offer must be rejected if the lands are found to be within a known geothermal resources area at any time prior to the issuance of a lease.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

Authority to make determinations of known geothermal resource areas has been delegated to the Geological Survey by the Secretary of the Interior. Where such determination is based upon the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), and on appeal appellant fails to establish any error in a Geological Survey determination of a known geothermal resources area, the determination will stand.

The Geological Survey, as the delegate of the Secretary, has a continuous obligation to review the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), to determine whether an area should be designated as a known geothermal resources area. Such an obligation necessarily envisions the review of factors which individually may or may not afford a sufficient basis for the designation, but which taken collectively clearly establish a sufficient predicate for determination of a known geothermal resources area.

Nancy J. Moffitt et al., 30 IBLA 107 (May 2, 1977)

A known geothermal resources area determination must be based upon one or more of the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), and where the Geological Survey, as the delegate of the Secretary, makes such a determination based on all available data, regardless of whether such data were previously known, the determination will stand, absent a showing of error by one questioning the designation.

Nancy J. Moffitt et al. (On Reconsideration), 31 IBLA 191 (July 5, 1977)

LANDS SUBJECT TO

An application for a lease of geothermal resources within a riverbed not under jurisdiction of the United States is properly rejected.

Milan S. Parolak, 19 IBLA 139 (Mar. 7, 1975)

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Austral Oil Co., Inc., 21 IBLA 243 (Aug. 11, 1975)

Until a final authoritative judicial determination is made of the title to geothermal resources in lands patented with a reservation of all minerals to the United States, a geothermal lease application which omits such patented lands from a section will not be considered in compliance with 43 CFR 3210.2-1(c) requiring all available lands in a section to be described in the lease application. However, the application may be suspended as to that section, rather than rejected, until the title question is resolved.

Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

GEOTHERMAL LEASES--Continued

LANDS SUBJECT TO--Continued

Where the reason given for the partial rejection of a noncompetitive geothermal lease application is that the Environmental Analysis Record has recommended against leasing the lands because they lie within an area associated with historic trails, and the records indicate that the State Office has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether the lands should be leased with protective stipulations.

Richard C. Hoefle, 24 IBLA 181 (Mar. 16, 1976)

Kirk Greene, 24 IBLA 262 (Mar. 29, 1976)

When the Bureau of Land Management rejects geothermal lease offers on the basis that the lands embraced within the offers are situated within a critical natural area excluded from leasing, but the record indicates the basis for rejection may be that the lands applied for are associated with historic trails where leasing activity has been approved subject to protective stipulations, the decisions will be set aside and the cases remanded for further clarification and consideration by the Bureau to determine whether the lands should be leased subject to protective stipulations.

Christian F. Murer, 24 IBLA 383 (Apr. 29, 1976)

A geothermal lease application is properly rejected to the extent that it includes land which has been reconveyed to the United States but which has only been opened to applications under the nonmineral public land laws.

Chevron Oil Co., 32 IBLA 275 (Sept. 27, 1977)

Where lands in issue formerly were included in a now terminated geothermal lease, and no *Federal Register* listing of units for re-leasing had been made as of time appellant filed her noncompetitive geothermal lease application, BLM properly rejected her offer in accordance with 43 CFR 3211.1. Appellant's argument that reasonable time for such listing had passed from termination of former lease to filing of appellant's offer does not state an exception to requirements of 43 CFR 3211.1.

Laura J. Spangler, 35 IBLA 29 (May 5, 1978)

A geothermal lease offer filed for lands which are withdrawn for the Department of Defense from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, is properly rejected. Where an offer to lease lands for geothermal resources cannot be accepted because the lands are withdrawn and not available for leasing, the offer will be rejected and may not be held in suspense until the land may become available for such leasing.

Sulphur River Exploration, Inc., 36 IBLA 307 (Aug. 21, 1978)

An application for lease of geothermal resources within a wildlife refuge is properly rejected because leasing of such areas is specifically prohibited by the Geothermal Resources Act and 43 CFR 3201.1-6.

Antoinette Carter, 37 IBLA 222 (Oct. 12, 1978)

GEOTHERMAL LEASES--Continued

LANDS SUBJECT TO--Continued

It is proper to reject an application for a geothermal resources lease where equitable title to the resource in issue is doubtful.

Dennis Potts, 42 IBLA 355 (Sept. 11, 1979)

NONCOMPETITIVE LEASES

Sec. 4 of Geothermal Steam Act of 1970 authorizes competitive bidding as sole basis for issuance of geothermal leases for lands determined to be within a KGRA. Sec. 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during Jan. 1974 filing period, and State Office rejections of appellant's Jan. 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 18 IBLA 393 (Feb. 7, 1975)
82 I.D. 60

Sec. 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during Jan. 1974 filing period, and State Office rejections of appellant's Jan. 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 19 IBLA 136 (Mar. 6, 1975)

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Lands within a known geothermal resources area (KGRA) are not available for noncompetitive leasing. Where lands included in a geothermal lease application are determined to be within a KGRA, and such determination is made after the filing of the application but before the issuance of a lease, or amendment thereto, pursuant to such application, the application must be rejected as to such lands.

Robert G. Lynn, 19 IBLA 167 (Mar. 17, 1975)

An application for a noncompetitive geothermal lease must be rejected with respect to land described in the application which, although not within a known geothermal resources area (KGRA) at the time the application is filed, is designated as being within a KGRA before a lease is issued for said land.

Baumgartner Cos., 21 IBLA 133 (July 14, 1975)

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a KGRA.

Charles J. Heringer, 21 IBLA 254 (Aug. 11, 1975)

Where a noncompetitive geothermal resources lease application indicates that the applicant is not the sole party in interest and is not accompanied by the information required by 43 CFR 3202.2-5 with respect to the nature of the agreement between the parties in interest and their qualifications, the offer must be rejected even if the applicant is, in fact, contrary to the information disclosed on the lease application, the sole party in interest, where such fact is unknown to the BLM.

An application for a noncompetitive lease of geothermal resources in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications or a reference by serial number to a record in which such statement previously had been filed.

Central Nevada Corp., 21 IBLA 308 (Aug. 14, 1975)

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Anadarko Production Co., 24 IBLA 132 (Mar. 4, 1976)

Caroline L. Hunt, 26 IBLA 178 (Aug. 9, 1976)

Where an application for a noncompetitive geothermal steam lease includes 2,598.98 acres of land, thereby exceeding the 2,560 acre limitation by 38.98 acres and the applicant, under 43 CFR 3210.2-1(c) is required to include all available lands within a section, the rule of approximation operates to allow the excess when the excess is smaller than the amount by which the area would be less than 2,560 acres if the irregular subdivision, in this case a section, were excluded.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17, 1976)

Where a noncompetitive geothermal lease application describes all the lands in a certain section by legal subdivisions and the section contains an available unsurveyed lake bed, the lease offer will be rejected as to such section because of the applicant's failure to describe the unsurveyed lake bed by metes and bounds as required by 43 CFR 3203.4(b).

Lamar Hunt, 27 IBLA 397 (Nov. 5, 1976)

30 U.S.C. § 1003 (1970) authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Issuance of a lease for geothermal resources is within the discretion of the Secretary of the Interior. Thus, the filing of an offer for a noncompetitive lease for geothermal steam resources creates no vested rights in the offeror and the offer must be rejected if the lands are found to be within a known geothermal resources area at any time prior to the issuance of a lease.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

REINSTATEMENT

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if it is shown that the failure to pay the lease rental timely was justifiable or not due to a lack of reasonable diligence.

The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

The submission of an unsigned check the day before the anniversary date of a geothermal resource lease does not constitute timely payment of rental and such a lease terminates by operation of law. The fact that a signed check was not sent until after the anniversary date precludes a finding of reasonable diligence, and because the failure to sign the original check was the result of inadvertence or employee error, it is a matter within the control of the lessee and therefore does not constitute justification for late payment.

Page T. Jenkins, 33 IBLA 135 (Dec. 19, 1977)

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if the lessee shows that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where late payment was caused by circumstances arising from the change in postal rates 3 days prior to the due date, the lease may be reinstated.

Ronald E. Stone, 37 IBLA 306 (Oct. 23, 1978)

A geothermal lease which has automatically terminated by operation of law for failure to submit the annual rental timely may be reinstated only where the lessee shows that the late payment of the rental was either justified or not due to a lack of reasonable diligence. The fact that an assignment application is pending does not justify a late payment of the rental either by the lessee or by the prospective assignee.

Supron Energy Corp., 40 IBLA 68 (Mar. 16, 1979)

To constitute a justifiable excuse for delay in making a rental payment sufficient to warrant reinstatement of a lease terminated for late payment of rental, a lessee must show that the delay was caused by factors outside his control which were the proximate cause of his failure to pay the rental timely. The negligence of an employee in failing to convey essential information to his employer regarding the necessity of making a timely payment does not constitute justification.

O'Brien Resources Corp., Thermal Power Co., 41 IBLA 367 (July 23, 1979)

GEOTHERMAL LEASES--Continued

RENTALS

A geothermal lease is automatically terminated when the lessee fails to pay the advance rental on or before the anniversary date of the lease.

Timely tender of a check which, when presented, is dishonored properly by the bank on which it is drawn does not constitute timely payment.

Caroline L. Hunt, 43 IBLA 314 (Oct. 22, 1979)

STIPULATIONS

A stipulation requiring an offeror under a geothermal resources lease to provide a certified statement by a qualified archaeologist concerning the existence of archaeological values on lands to be disturbed by the lessee and to accept reasonable conditions of use for the protection of such areas and which requires the lessee to bear the cost of salvaging objects of antiquity is reasonable and will be upheld.

Western Oil Shale Corp., 41 IBLA 105 (June 11, 1979)

TERMINATION

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if it is shown that the failure to pay the lease rental timely was justifiable or not due to a lack of reasonable diligence.

The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

The submission of an unsigned check the day before the anniversary date of a geothermal resource lease does not constitute timely payment of rental and such a lease terminates by operation of law. The fact that a signed check was not sent until after the anniversary date precludes a finding of reasonable diligence, and because the failure to sign the original check was the result of inadvertence or employee error, it is a matter within the control of the lessee and therefore does not constitute justification for late payment.

Page T. Jenkins, 33 IBLA 135 (Dec. 19, 1977)

Under 30 U.S.C. § 1004(c) (1970) and 43 CFR 3205.3-2(a), a geothermal resources lease is automatically terminated when the lessee fails to pay advance rental on or before the anniversary date of the lease. Rental payment which arrives at a BLM State Office by Western Union after normal business hours on the anniversary date constitutes payment on the next business day, and is accordingly untimely, so that the lease is properly regarded as having automatically terminated by operation of law.

Failure to make full payment of rental on a geothermal resources lease on or before its anniversary date automatically terminates the lease. Where a lessee has not filed a formal written relinquishment on or before the anniversary date of the lease, as required by 43 CFR 3244.1, his lease account is chargeable with and he is liable to pay advance rental on all of his leasehold on or before the anniversary date. The lessee is not permitted, in lieu of filing a formal relinquishment, to relinquish part of his leasehold by submitting partial payment designated as rental only for the specific acreage he desires to retain.

Robert L. Wheeler, 33 IBLA 371 (Jan. 23, 1978)

GEOTHERMAL LEASES--Continued

TERMINATION--Continued

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if the lessee shows that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where late payment was caused by circumstances arising from the change in postal rates 3 days prior to the due date, the lease may be reinstated.

Ronald E. Stone, 37 IBLA 306 (Oct. 23, 1978)

A geothermal lease which has automatically terminated by operation of law for failure to submit the annual rental timely may be reinstated only where the lessee shows that the late payment of the rental was either justified or not due to a lack of reasonable diligence. The fact that an assignment application is pending does not justify a late payment of the rental either by the lessee or by the prospective assignee.

Supron Energy Corp., 40 IBLA 68 (Mar. 16, 1979)

A geothermal lease is automatically terminated when the lessee fails to pay the advance rental on or before the anniversary date of the lease.

Timely tender of a check which, when presented, is dishonored properly by the bank on which it is drawn does not constitute timely payment.

Caroline L. Hunt, 43 IBLA 314 (Oct. 22, 1979)

GEOTHERMAL RESOURCES

A reservation of geothermal resources under the Geothermal Steam Act of 1970 may be inserted in a patent issued for an Indian allotment granted under the fourth section of the General Allotment Act.

Heirs of Carrie Bethel, 29 IBLA 210 (Mar. 22, 1977)

Under 43 U.S.C. § 852(a)(1) (1970), *as amended* by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

Per sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these

GEOTHERMAL RESOURCES--Continued

rights be given to the State by deleting the reservation thereof in the clear list.

Where the record indicates that there may be gross disparity between the value of lands selected by a State as indemnity for lost school lands and the value of base lands submitted by the State in support of the selection, the matter will be remanded to the BLM for revaluation of the lands. If the revaluation reveals a gross disparity, the BLM shall withhold further action until judicial resolution of the propriety of the "grossly disparate value" policy.

State of California, 33 IBLA 160 (Dec. 20, 1977)

GRAZING AND GRAZING LANDS

Where a sec. 15 grazing lease is issued to an applicant whose brother is an employee of this Department, and such employee owns stock in the corporation that owns the contiguous fee land, control over which the applicant asserts as the basis for his preference right to the grazing lease, such applicant cannot be granted the desired grazing lease. Any such lease must be canceled when the facts are called to the Department's attention. This result occurs under 43 CFR 7.2 and 7.3 which prohibit any employee from acquiring or retaining any interest in the lands or resources administered by the Bureau of Land Management. The prohibition extends to any interest in land which in any manner is connected with or involves the use of the grazing resources administered by the Bureau of Land Management.

Donald E. and Nancy P. Janson (On Reconsideration), 19 IBLA 154 (Mar. 14, 1975) 82 I.D. 93

Where the record does not clearly show whether either or both of two grazing lease applicants are preference right applicants and does not reflect consideration of all of the factors mandated by 43 CFR 4121.2-1(d)(2) for evaluating conflicting grazing lease applications, a decision awarding the lease to one of the parties will be set aside and the case remanded for further consideration.

Elmer M. Johnson, 20 IBLA 111 (Apr. 25, 1975)

Improvement of land by fencing, and use as horse pasture, constitutes agricultural use which does not qualify as "trade, manufacture, or other productive industry" within the meaning of the Act of May 14, 1898, *as amended*, 43 U.S.C. § 687a (1970), regardless of the type of business in connection with which the pasturage is desired.

Evelyn M. Bunch, 25 IBLA 44 (May 13, 1976)

The denial of a private landowner's request that the Bureau of Land Management share in the expenses of constructing a fence between Federal and private land will be upheld where the landowner has failed to show a valid legal or factual reason for granting the request.

John L. Time and Ruth E. Blomgren, 30 IBLA 317 (June 6, 1977)

Where the alleged trespasser makes no allegations of a specific and substantial nature regarding whether or not a trespass has in fact occurred, the procedure authorized by 43 CFR 9239.3-2(c)(4) limiting a hearing "to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass" does not result in a denial of due process.

A hearing on the issue of whether or not a trespass was willful or not clearly willful is authorized by 43 CFR 9239.3-2(c)(4) because a finding on this issue affects the rate at which the value of the forage consumed shall be computed pursuant to 43 CFR 9239.3-2(c)(2).

In determining whether grazing trespasses are willful, intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Since a grazing trespass is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Evidence is insufficient to support a finding of a willful trespass where it fails to show that the alleged trespasser intended to disregard the regulation prohibiting trespass or that he was plainly indifferent to its requirements or that he acted with gross neglect of a known duty.

Where the administrative law judge does not make a finding as to whether a trespass was willful or not clearly willful, the Board of Land Appeals may make this finding based upon the record as if it were sitting as trier of fact.

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(3) do not violate due process.

The Property Clause of the United States Constitution art. IV, § 3, cl. 2, gives Congress the power over the public lands "to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them." When Congress so acts, the Federal legislation necessarily overrides conflicting State laws under the Supremacy Clause. U.S. Constitution art. IV, cl. 2.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 6, 1978)

Where an applicant for a range improvement project involving alteration of the Native range by reseeding with non-Native species and requiring the expenditure of a large sum of public funds does not show that there is an urgent situation requiring immediate improvement of the range as proposed, a decision by the BLM range manager denying the application because management framework and allotment management plans have not been formulated is properly affirmed, as, ordinarily, such a venture should not be undertaken without the type of information these plans are intended to provide.

Loyd Sorensen, Von L. Sorensen, Kenneth Jones, 41 IBLA 354 (July 20, 1979)

GRAZING LEASES

GENERALLY

A determination by a district manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

An appeal from a district manager's decision reducing the authorized use of lands offered under a sec. 15 grazing lease will be dismissed where the grazing season covered by the term of the proposed lease has expired and the appellant must meet a precondition before any future lease issues. The dismissal, however, will be without prejudice to the appellant's submitting evidence to the district manager to disprove the determination of the carrying capacity of the range, if he otherwise meets the precondition for a lease.

John T. Murtha, 19 IBLA 97 (Mar. 4, 1975)

Where a sec. 15 grazing lease is issued to an applicant whose brother is an employee of this Department, and such employee owns stock in the corporation that owns the contiguous fee land, control over which the applicant asserts as the basis for his preference right to the grazing lease, such applicant cannot be granted the desired grazing lease. Any such lease must be canceled when the facts are called to the Department's attention. This result occurs under 43 CFR 7.2 and 7.3 which prohibit any employee from acquiring or retaining any interest in the lands or resources administered by the Bureau of Land Management. The prohibition extends to any interest in land which in any manner is connected with or involves the use of the grazing resources administered by the Bureau of Land Management.

Donald E. and Nancy P. Jansen (On Reconsideration), 19 IBLA 154 (Mar. 14, 1975) 82 I.D. 93

The regulations pertaining to sec. 15 grazing leases provide that a corporation is a qualified applicant for a lease if it is a corporation whose controlling interest is vested in persons who are engaged in the livestock business. 43 CFR 4121.1-1(b). Where the corporate applicant itself is engaged in a livestock business such a showing is sufficient for the corporation to meet this requirement without the need for those holding a controlling interest in the corporation to make an additional showing that they are engaged in a livestock operation in their individual capacities.

Defenders of Wildlife, 19 IBLA 219 (Mar. 25, 1975)

Where the record does not clearly show whether either or both of two grazing lease applicants are preference right applicants and does not reflect consideration of all of the factors mandated by 43 CFR 4121.2-1(d)(2) for evaluating conflicting grazing lease applications, a decision awarding the lease to one of the parties will be set aside and the case remanded for further consideration.

Elmer M. Johnson, 20 IBLA 111 (Apr. 25, 1975)

The regulations governing Departmental employees' rights to hold a direct or indirect interest in public lands must be construed *in pari materia* with the regulations governing qualification to hold a grazing lease under sec. 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970). A non-employee may be disqualified from holding a lease by his business relationship with an employee if the issuance of the lease would create an interest in public land proscribed by regulation.

Donald E. and Nancy P. Jansen (On Reconsideration), 23 IBLA 374 (Feb. 4, 1976)

One of the functions of the Department of Justice is to construe the laws under which other Government Departments act, 28 U.S.C. § 512 (1970), and when the Department of Justice has advised the Department of the Interior that it has construed a conflict of interest statute affecting Members of Congress and has determined that it is permissible for the spouse of a Member of Congress to hold a grazing lease for national resource lands under certain circumstances, that opinion is binding on this Department, and a grazing lease is properly issued when the applicant has satisfied the criteria set forth by the Department of Justice.

Joseph T. Kurkowski, 24 IBLA 58 (Feb. 23, 1976)

A decision renewing a sec. 15 grazing lease and rejecting a conflicting application, rendered in compliance with the standard prescribed by 43 CFR 4121.2-1(d)(2), will not be overturned in the absence of convincing reasons that the award is not warranted.

Where conflicting applications have been filed for a sec. 15 grazing lease and proper range management can be obtained from either applicant, and where both have an equal need for the land, the applicant seeking a renewal based on historical use generally will be favored.

Dorr Cornelison, 24 IBLA 155 (Mar. 15, 1976)

A determination by a district manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

Kaser Brothers, 24 IBLA 265 (Mar. 29, 1976)

A grazing lease is properly canceled because of the lessee's loss of control of the lands which were recognized as the basis of the preference right to the lease.

W. Doyle Wood, Jane L. Wood, 25 IBLA 261 (June 23, 1976)

R. Richard Wendling, 31 IBLA 214 (July 6, 1977)

An appeal from a decision of the Bureau of Land Management rejecting a grazing lease application and approving a conflicting application will not be summarily dismissed for failure to serve an adverse party who is not specifically designated as such in the decision appealed from. A decision of the Bureau of Land Management that a conflicting applicant has a preference right to the grazing lease will be affirmed when the applicant appealing fails to indicate any error in the decision.

Jack Sedman, 25 IBLA 277 (June 25, 1976)

GRAZING LEASES--Continued

GENERALLY--Continued

The regulations do not require that a lessee be given advance notice of nonrenewal of a grazing lease, nor is he entitled to rely upon an asserted assurance that he could have the lease as long as he desired.

It is proper to reject an application for renewal of a grazing lease where the land applied for is of such character that livestock grazing would be detrimental to other uses of the land such as wildlife and recreational uses.

Carl Peterson, 25 IBLA 328 (June 30, 1976)

The regulations do not provide for hearings as a matter of right on trespass violations involving a sec. 15 grazing lessee. For the Board of Land Appeals to exercise its discretion under 43 CFR 4.415 and order a hearing, the appellant must allege facts which, if proved, would entitle him to the relief sought.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976) 83 I.D. 269

One who has laid claim, pursuant to the Wild Free-Roaming Horses and Burros Act, to horses on the public lands and who does not remove them within a reasonable period, is subject to having the renewal of his grazing lease denied.

Truman and Velma Cross, 29 IBLA 4 (Feb. 7, 1977)

A preference right applicant is properly determined to have lost control of non-Federal leased lands which constitute the basis for the preference and thereafter his sec. 15 grazing lease is subject to cancellation where (1) the lessor of the preference land notifies the BLM that the applicant's private lease has been terminated for delinquent rental; (2) the provisions of the private lease on record with the BLM clearly indicate the lessor has ample authority to cancel that lease at his discretion; and (3) after confrontation with these circumstances by a BLM show cause notice, the applicant does not deny he has lost control of his base lands, nor does he provide positive or substantive evidence that he still controls the private leased base lands.

Charles A. Mitchell, Jr., 30 IBLA 1 (Apr. 1, 1977)

Under the terms and conditions in 43 CFR 4125.1-1(i) placed by the Department on the continued effectiveness of grazing leases, as allowed by sec. 15 of the Taylor Grazing Act, a grazing lease may be canceled in its entirety in order to use the land included in it as a wildlife habitat.

Under sec. 402(g) of the Federal Land Policy and Management Act, except in cases of emergency, a cancellation of a grazing lease by the Government after Oct. 21, 1976, may not be given effect until 2 years after the lessee has received notification of the cancellation of the lease. This provision is construed as applicable to all existing grazing leases, licenses and permits, including those issued prior to the Act.

Bill M. Fraser, 30 IBLA 277 (June 1, 1977)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision made in the exercise of that discretion must contain such a statement of reasons in support of the decision as will establish that the discretion has been exercised in a manner that is neither arbitrary nor capricious. Review on the issue of abuse of discretion is limited to an inquiry whether the statement of reasons establishes a rational and defensible basis for the decision below.

Andrew E. L. Anderson et al., 32 IBLA 123 (Sept. 12, 1977)

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring grazing lease receives first priority for the new lease if the requirements of sec. 402(c) are met. Therefore, a conflicting applicant is properly denied the lease where the renewal applicant meets those requirements.

Allen B. Prouse, 32 IBLA 311 (Sept. 30, 1977) 84 I.D. 674

George T. McDonald, Cascade Ranches, Inc., 35 IBLA 75 (May 12, 1978)

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring lease shall be given first priority for receipt of the new lease as long as the lessee is in compliance with the rules and regulations issued and the terms and conditions in the lease. Therefore, if the holder of an expiring lease loses control of the private property contiguous to public land which gave him a preference right to a lease under 43 CFR 4121.2-1(c), he is not entitled to first priority for receipt of a new lease.

Where an area manager's decision divides the sec. 15 grazing use of a tract of public land between two applicants on the assumption that both are qualified preference right claimants, and it is determined on appeal that one claimant is not qualified, the decision will be set aside and the case remanded to the Bureau of Land Management for determination of the rights of the other applicant.

Mark E. Trask, 32 IBLA 395 (Nov. 9, 1977)

A decision renewing a grazing lease and rejecting a conflicting application which is rendered in accordance with the governing statutory standard set out in sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752(c) (___ Supp. 197_), will not be overturned in the absence of convincing reasons that the award is not warranted.

Fancher Bros., 33 IBLA 262 (Jan. 5, 1978)

Where record indicates no dispute that there was grazing use of public lands in issue from 1951 to 1975 by current grazing lease applicant's predecessors in interest, followed by 1-year hiatus in valid grazing use prior to current applicant's filing for lease, since length of hiatus was reasonable under circumstances, and since general intention of historical use criterion in 43 CFR 4121.2-1(d)(2) was not contradicted during break in valid grazing use, BLM was not arbitrary in applying historical use criterion in favor of one applicant in a case involving conflicting grazing lease applications. Here, hiatus was approximately one grazing season and was occasioned by purchase at foreclosure sale of preference lands by first mortgagee, who

GRAZING LEASES--Continued

GENERALLY--Continued

conveyed those lands 1 year later to current applicant, a grazing operator.

Considering record as a whole, Board concludes that neither of appellants has shown that District Office decision apportioning, on basis of historical use in favor of one appellant and topography in favor of other appellant, grazing lands between two lease applicants was arbitrary or capricious, or without rational basis, or inequitable.

John Rattray, Elmer L. Wilson, 36 IBLA 282 (Aug. 21, 1978)

An area manager's decision apportioning lands between two grazing lease applicants ordinarily will not be disturbed where both applicants have equal preference rights, the apportionment is consistent with the regulatory criteria of 43 CFR 4121.2-1(d)(2), and the decision is not shown to be arbitrary or capricious. However, where a new statute, sec. 402 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1978), dictates that in certain circumstances "the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease," the apportionment must be conformed therewith.

In view of 43 U S.C.A. § 1752(c) (West Supp. 1978), which dictates that in certain circumstances the present grazing user shall have a right of first refusal for any new lease, 43 CFR 4110.5 (43 FR 29070), must be read *in pari materia* therewith and with 43 CFR 4130.2(e) (43 FR 29072) to be construed as a valid regulation and must be interpreted not to apply where the present grazing user desires a new lease and otherwise meets the statutory and regulatory criteria.

Harvey Sheehan and Hazel Holland Hudon, 39 IBLA 56 (Jan. 16, 1979) 86 I.D. 51

A district manager's decision reached in the exercise of administrative discretion pursuant to the Taylor Grazing Act of 1934 may be regarded as arbitrary or capricious only where it is not supportable on any rational basis and the burden is on the appellant to show by substantial evidence that the decision is improper. A district manager's decision not to reissue a grazing lease for a certain area until that area is fenced and to reduce appellant's AUM's accordingly rests on a rational basis where the facts show that this unfenced area adjoins the bombing range and grazing thereon could result in trespass on the bombing range, inconsistent with the use of the range.

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

Where two conflicting grazing lease applications are filed under the Taylor Grazing Act, *as amended*, 43 U.S.C. § 314m (1976), and one applicant owns base property of 320 acres which supports a preference right for the grazing lease, which base property the other applicant formerly leased from a previous owner to support a grazing lease, the grazing lease is properly issued to the applicant who is the present owner of the base property because such property has historically been used in connection with that grazing lease and the base controlled by the other applicant is only 80 acres.

A decision of the district manager rejecting a grazing lease application will not be disturbed on appeal in the absence of a showing that the decision is not reasonable or does not comport with statutory or regulatory standards, and where the decision appealed from is consonant with good range management.

Ted Crum, 40 IBLA 129 (Mar. 28, 1979)

In view of 43 U.S.C. § 1752(c) (1976), which dictates that in certain circumstances the holder of the expiring grazing lease shall be given first priority for receipt of the new lease, a district manager's decision apportioning lands between conflicting lease applicants will not be disturbed where holders of the expiring lease receive the land except for a portion and do not appeal the award of the portion to a conflicting applicant, thus waiving their preference right to said portion.

Cub River Stockmen's Ass'n, 42 IBLA 26 (July 26, 1979)

APPLICATIONS

The regulations require that a qualified applicant for a sec. 15 grazing lease be engaged in the livestock business and have a need for the land. Therefore, unless an applicant owns livestock for business purposes, or is a recognized livestock operator who temporarily or due to circumstances beyond his control does not own any livestock, he is not qualified to be awarded a lease.

Ralph E. Nolan, 18 IBLA 432 (Feb. 14, 1975)

The regulations pertaining to sec. 15 grazing leases provide that a corporation is a qualified applicant for a lease if it is a corporation whose controlling interest is vested in persons who are engaged in the livestock business. 43 CFR 4121.1-1(b). Where the corporate applicant itself is engaged in a livestock business such a showing is sufficient for the corporation to meet this requirement without the need for those holding a controlling interest in the corporation to make an additional showing that they are engaged in a livestock operation in their individual capacities.

Defenders of Wildlife, 19 IBLA 219 (Mar. 25, 1975)

A district manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon the regulatory criterion of historical use and there are no convincing reasons warranting a change of lessee.

George Aspis, 20 IBLA 115 (Apr. 25, 1975)

In order to qualify as a preference right applicant for a grazing lease on public land under sec. 15 of the Taylor Grazing Act, the applicant must own or lawfully occupy contiguous private land the proper use of which requires issuance of a grazing lease. Use or occupancy of contiguous public land under a sec. 15 grazing lease does not, by itself, qualify to establish a preference right over contiguous owners or lawful occupants of private lands. The fact an applicant once owned contiguous land and had a lease for the land is irrelevant in determining his present preference status.

Ralph C. Lorenz, 24 IBLA 1 (Feb. 4, 1976)

GRAZING LEASES--Continued

APPLICATIONS--Continued

A decision renewing a sec. 15 grazing lease and rejecting a conflicting application, rendered in compliance with the standard prescribed by 43 CFR 4121.2-1(d)(2), will not be overturned in the absence of convincing reasons that the award is not warranted.

Where conflicting applications have been filed for a sec. 15 grazing lease and proper range management can be obtained from either applicant, and where both have an equal need for the land, the applicant seeking a renewal based on historical use generally will be favored.

Dorr Cornelison, 24 IBLA 155 (Mar. 15, 1976)

A grazing lease is properly denied when utilization of the leased property could have a substantial adverse effect on the environment and the Bureau of Land Management is under court order forbidding approval of such activity pending the preparation, filing and acceptance of an environmental impact statement.

Robert H. Jones, James E. Jones, 25 IBLA 93 (June 2, 1976)

The regulations do not require that a lessee be given advance notice of nonrenewal of a grazing lease, nor is he entitled to rely upon an asserted assurance that he could have the lease as long as he desired.

It is proper to reject an application for renewal of a grazing lease where the land applied for is of such character that livestock grazing would be detrimental to other uses of the land such as wildlife and recreational uses.

Carl Peterson, 25 IBLA 376 (June 30, 1976)

A district manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon regulatory criteria including historical use and needs of the applicants, and there are no convincing reasons warranting a change of lessee.

Where a district manager renews a grazing lease and denies a conflicting application, he may require as a condition to continuance of the lease that the applicant for the lease renewal fence that portion of National Resource Lands adjacent to land leased by the conflicting applicant, in order to prevent trespass of the livestock belonging to the applicant for the lease renewal.

Wesley Leininger, 28 IBLA 93 (Nov. 15, 1976)

In order to qualify as a preference right applicant for a grazing lease on public land under sec. 15 of the Taylor Grazing Act, the applicant must own or control contiguous or cornering private land, the proper use of which requires issuance of a grazing lease. The fact that an applicant once owned contiguous land and had a lease for the public land is irrelevant in determining his present preference status.

Mark E. Frank, 32 IBLA 395 (Nov. 9, 1977)

GRAZING LEASES--Continued

APPLICATIONS--Continued

A decision renewing a grazing lease and rejecting a conflicting application which is rendered in accordance with the governing statutory standard set out in sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752(c) (___ Supp. 197_), will not be overturned in the absence of convincing reasons that the award is not warranted.

Past use of public land for grazing in trespass does not constitute cognizable historical use for the purpose of resolving conflicting applications for a grazing lease.

An applicant to purchase land under R.S. 2455 gains no rights in the land therefrom as against the United States and is not entitled to preferential treatment on an application for a grazing lease of the same land.

Fancher Bros., 33 IBLA 262 (Jan. 5, 1978)

Priority of filing is not one of criteria listed in 43 CFR 4121.2-1(d)(2) for adjudicating conflicting grazing lease applications. Therefore, one appellant's filing for lease before other appellant gives former no rights superior to latter's.

John Rattray, Elmer L. Wilson, 36 IBLA 282 (Aug. 21, 1978)

Where a decision rejects an application for an Alaska grazing lease because of an asserted Secretarial policy against granting such applications for land withdrawn pursuant to sec. 17(d)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(d)(2) (Supp. V 1975), but the record on appeal is incomplete with respect to the existence of such policy, the record should be remanded for further documentation.

Neither an application for an Alaska grazing lease nor an application for assignment of a grazing lease confer upon the applicant a right to a lease, the granting thereof being discretionary and subject to any changes in Secretarial policy.

The Board of Land Appeals will not exercise its de novo review authority to deny applications for Alaska grazing leases on the basis of trespass where (1) trespass was not cited as a reason for denial of the applications in the decision under appeal, (2) the record does not provide a clear basis for determining the applicant's responsibility for the trespass, and (3) there is no record of compliance with the procedures specified in 43 CFR 9239.0-9(b).

Kenneth E. Fusch, 37 IBLA 346 (Oct. 27, 1978)

Where two conflicting grazing lease applications are filed under the Taylor Grazing Act, as amended, 43 U.S.C. § 314m (1976), and one applicant owns base property of 320 acres which supports a preference right for the grazing lease, which base property the other applicant formerly leased from a previous owner to support a grazing lease, the grazing lease is properly issued to the applicant who is the present owner of the base property because such property has historically been used in connection with that grazing lease and the base controlled by the other applicant is only 80 acres.

A decision of the district manager rejecting a grazing lease application will not be disturbed on appeal in the absence of a showing that the decision is not reasonable

GRAZING LEASES--Continued

APPLICATIONS--Continued

or does not comport with statutory or regulatory standards, and where the decision appealed from is consonant with good range management.

Ted Crum, 40 IBLA 129 (Mar. 28, 1979)

APPORTIONMENT OF LAND

Where an area manager's decision divides the sec. 15 grazing use of a tract of public land between two applicants on the assumption that both are qualified preference right claimants, and it is determined on appeal that one claimant is not qualified, the decision will be set aside and the case remanded to the Bureau of Land Management for determination of the rights of the other applicant.

Mark E. Trask, 32 IBLA 395 (Nov. 9, 1977)

Priority of filing is not one of criteria listed in 43 CFR 4121.2-1(d)(2) for adjudicating conflicting grazing lease applications. Therefore, one appellant's filing for lease before other appellant gives former no rights superior to latter's.

Where record indicates no dispute that there was grazing use of public lands in issue from 1951 to 1975 by current grazing lease applicant's predecessors in interest, followed by 1-year hiatus in valid grazing use prior to current applicant's filing for lease, since length of hiatus was reasonable under circumstances, and since general intention of historical use criterion in 43 CFR 4121.2-1(d)(2) was not contradicted during break in valid grazing use, BLM was not arbitrary in applying historical use criterion in favor of one applicant in a case involving conflicting grazing lease applications. Here, hiatus was approximately one grazing season and was occasioned by purchase at foreclosure sale of preference lands by first mortgagee, who conveyed those lands 1 year later to current applicant, a grazing operator.

Considering record as a whole, Board concludes that neither of appellants has shown that District Office decision apportioning, on basis of historical use in favor of one appellant and topography in favor of other appellant, grazing lands between two lease applicants was arbitrary or capricious, or without rational basis, or inequitable.

John Rattray, Elmer L. Wilson, 36 IBLA 282 (Aug. 21, 1978)

An area manager's decision apportioning lands between two grazing lease applicants ordinarily will not be disturbed where both applicants have equal preference rights, the apportionment is consistent with the regulatory criteria of 43 CFR 4121.2-1(d)(2), and the decision is not shown to be arbitrary or capricious. However, where a new statute, sec. 402 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1978), dictates that in certain circumstances "the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease," the apportionment must be conformed therewith.

In view of 43 U.S.C.A. § 1752(c) (West Supp. 1978), which dictates that in certain circumstances the present grazing user shall have a right of first refusal for any new lease, 43 CFR 4110.5 (43 FR 29070), must be read *in pari materia* therewith and with 43 CFR 4130.2(e) (43 FR 29072) to be construed as a valid regulation and must be interpreted not to apply where

GRAZING LEASES--Continued

APPORTIONMENT OF LAND--Continued

the present grazing user desires a new lease and otherwise meets the statutory and regulatory criteria.

Harvey Sheehan and Hazel Holland Hudson, 39 IBLA 56 (Jan. 16, 1979) 86 I.D. 51

In view of 43 U.S.C. § 1752(c) (1976), which dictates that in certain circumstances the holder of the expiring grazing lease shall be given first priority for receipt of the new lease, a district manager's decision apportioning lands between conflicting lease applicants will not be disturbed where holders of the expiring lease receive the land except for a portion and do not appeal the award of the portion to a conflicting applicant, thus waiving their preference right to said portion.

Cub River Stockmen's Ass'n, 42 IBLA 26 (July 26, 1979)

ASSIGNMENT

Where a reduction in the authorized use of land leased pursuant to sec. 15 of the Taylor Grazing Act is required in order to conform to the actual grazing capacity of the land, the full amount of that reduction must be imposed immediately rather than gradually. Where acceptance of the reduction is made a condition precedent for the approval of an assignment and for the issuance of a new lease, the assignee and prospective lessee will be held to have the same right to appeal the reduction as the original lessee.

Duke W. Evans et al., 26 IBLA 15 (July 7, 1976)

CANCELLATION OR REDUCTION

A grazing lease issued pursuant to sec. 15 of the Taylor Grazing Act is properly canceled where the lessee has violated the terms of the lease and the regulations by subleasing lands within the area of the lease.

Coronado Development Corp., 19 IBLA 71 (Feb. 26, 1975)

Earl G. and Robert E. Murphy, 24 IBLA 124 (Mar. 2, 1976)

Where a reduction in the authorized use of lands subject to a sec. 15 grazing lease is required to conform to the grazing capacity of such lands as determined by a district manager, the full amount of the downward adjustment must be imposed immediately.

An appeal from a district manager's decision reducing the authorized use of lands offered under a sec. 15 grazing lease will be dismissed where the grazing season covered by the term of the proposed lease has expired and the appellant must meet a precondition before any future lease issues. The dismissal, however, will be without prejudice to the appellant's submitting evidence to the district manager to disprove the determination of the carrying capacity of the range, if he otherwise meets the precondition for a lease.

John T. Murtha, 19 IBLA 97 (Mar. 4, 1975)

Where a sec. 15 grazing lease is issued to an applicant whose brother is an employee of this Department, and such employee owns stock in the corporation that owns the contiguous fee land, control over which the applicant asserts as the basis for his preference right to the grazing lease, such applicant cannot be granted the desired grazing lease. Any such lease must be canceled when the facts are called to the Department's attention. This result occurs under 43 CFR 7.2 and 7.3 which prohibit any employee from acquiring or retaining any interest in the lands or resources administered by the Bureau of Land Management. The prohibition extends to any interest in land which in any manner is connected with or involves the use of the grazing resources administered by the Bureau of Land Management.

Donald E. and Nancy P. Jasson (On Reconsideration), 19 IBLA 154 (Mar. 14, 1975) 82 I.D. 93

An appeal from a decision canceling a grazing lease for loss of control of non-Federal lands upon which the lease was based will be dismissed where the lease has expired by its terms. The dismissal will be without prejudice to a new lease application for the grazing lands which the appellant may decide to submit.

Ralph Rogers, 22 IBLA 31 (Sept. 10, 1975)

Under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq.* (1970), issuance of a grazing lease appropriates the lands and segregates them from public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from lease.

Edward P. Naughton, 23 IBLA 134 (Dec. 23, 1975)

A grazing lease is properly canceled because of the lessee's loss of control of the lands which were recognized as the basis of the preference right to the lease.

W. Doyle Wood, Jane L. Wood, 25 IBLA 261 (June 23, 1976)

E. Richard Wendling, 31 IBLA 214 (July 6, 1977)

When the holder of a grazing lease is found to have violated regulations and the terms of his lease because his cattle have trespassed on Federal land, his lease may be canceled when lesser sanctions have proved to be of no effect or when the nature of the violation demands such severity. However, a decision canceling a lease will be set aside where the district manager relied upon alleged trespasses of which the lessees had no notice and which occurred after a show cause notice had issued, and the case will be remanded for further proceedings.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976) 83 I.D. 269

Where a reduction in the authorized use of land leased pursuant to sec. 15 of the Taylor Grazing Act is required in order to conform to the actual grazing capacity of the land, the full amount of that reduction must be imposed immediately rather than gradually. Where acceptance of the reduction is made a condition precedent for the approval of an assignment and for the issuance of a new lease, the assignee and prospective lessee will be held to have the same right to appeal the reduction as the original lessee.

While a determination of the grazing capacity of public lands will not ordinarily be overturned in the absence of a clear showing of error, a hearing may be ordered to resolve conflicts in the opinions of different experts where the lessee has made a substantial and believable offer of proof which, if true, would show error in the Bureau of Land Management's determination.

Duke W. Evans et al., 26 IBLA 15 (July 7, 1976)

In accordance with 43 CFR 4125.1-1(i)4, and with the terms of a sec. 15 grazing lease, Taylor Grazing Act, *as amended*, 43 U.S.C. § 315m (1970), a preference right lease will be terminated upon loss of control by the lessee of non-Federal lands which have been recognized as the basis for the issuance of that lease.

Charles A. Mitchell, Jr., 30 IBLA 1 (Apr. 1, 1977)

Under the terms and conditions in 43 CFR 4125.1-1(i) placed by the Department on the continued effectiveness of grazing leases, as allowed by sec. 15 of the Taylor Grazing Act, a grazing lease may be canceled in its entirety in order to use the land included in it as a wildlife habitat.

Under sec. 402(g) of the Federal Land Policy and Management Act, except in cases of emergency, a cancellation of a grazing lease by the Government after Oct. 21, 1976, may not be given effect until 2 years after the lessee has received notification of the cancellation of the lease. This provision is construed as applicable to all existing grazing leases, licenses and permits, including those issued prior to the Act.

Bill W. Fraser, 30 IBLA 277 (June 1, 1977)

Where a sec. 15 grazing lessee loses control of lands recognized as the basis for her preference right to a portion of the lands within the grazing lease, the Bureau of Land Management properly cancels the grazing lease as to those lands.

When a sec. 15 grazing lease is canceled in part for loss of control of preference lands, allegations concerning the lessee's control of other lands contiguous to the grazing lease, or concerning a possible conflicting applicant's lack of qualifications to hold a grazing lease, are not relevant to show cause why the grazing lease should not be canceled in part.

Remedies for an alleged breach of a private lease agreement involving preference lands for a sec. 15 grazing lease must be sought in the appropriate courts and not before the Department of the Interior, which has no jurisdiction over such matters.

Where the Bureau of Land Management erroneously described a portion of the land listed in a notice to show cause why a grazing lease should not be canceled in part, the lessee is not denied due process where the land could not be confused with other lands in the grazing lease, where BLM corrected and explained its mistake in the subsequent decision, where no prejudice from the mistake is alleged or evident, and where the lessee has had every opportunity to present her arguments on the issues involved in the BLM actions.

If a grazing lease, canceled in part for loss of control of preference lands, expires by its terms prior to decision on the appeal of the cancellation and if the grazing lease is renewed solely because the appellate decision has not been rendered, with no consideration of the lessee's or conflicting preference rights, the Board of Land Appeals will consider the appeal of the cancellation as applicable to the renewed lease.

Evelyn Gleason, 35 IBLA 23 (May 5, 1978)

GRAZING LEASES--Continued

CANCELLATION OR REDUCTION--Continued

43 CFR 4125.1-1(m)(3) provides that a grazing lease may be canceled for failure to make timely payment of grazing fees pursuant to 43 CFR 4125.1-1(h). The fact that cash was not available at the time payment was due; that executor of appellant estate relied upon his wife who failed to make timely payment; and that the wife was notified of a death in the family after the due date, does not justify the failure to pay the fee by the required date.

Reese Hennagan Estate, 36 IBLA 399 (Sept. 5, 1978)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. A grazing lease is properly canceled where the lessee fails to pay the rental pursuant to 43 CFR 4125.1-1(h) and 4125.1-1(m)(3). The Boards of Appeal of this Department have no authority to declare a Secretary's regulation invalid.

Sombrero Ranches, Inc., 38 IBLA 327 (Dec. 19, 1978)

A district manager's decision reached in the exercise of administrative discretion pursuant to the Taylor Grazing Act of 1934 may be regarded as arbitrary or capricious only where it is not supportable on any rational basis and the burden is on the appellant to show by substantial evidence that the decision is improper. A district manager's decision not to reissue a grazing lease for a certain area until that area is fenced and to reduce appellant's AUM's accordingly rests on a rational basis where the facts show that this unfenced area adjoins the bombing range and grazing thereon could result in trespass on the bombing range, inconsistent with the use of the range.

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

A grazing lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq.* (1970), appropriates the lands and segregates them from the public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from the lease.

Herman Anderson, Jr., Nicholas Pestrikoff, Anthony Drabek, 41 IBLA 296 (June 29, 1979)

PREFERENCE RIGHT APPLICANTS

The regulations require that a qualified applicant for a sec. 15 grazing lease be engaged in the livestock business and have a need for the land. Therefore, unless an applicant owns livestock for business purposes, or is a recognized livestock operator who temporarily or due to circumstances beyond his control does not own any livestock, he is not qualified to be awarded a lease.

Ralph E. Nolan, 19 IBLA 432 (Feb. 14, 1975)

Where a sec. 15 grazing lease is issued to an applicant whose brother is an employee of this Department, and such employee owns stock in the corporation that owns the contiguous fee land, control over which the applicant asserts as the basis for his preference right to the grazing lease, such applicant cannot be granted the desired grazing lease. Any such lease must be canceled when the facts are called to the Department's attention. This result occurs under 43 CFR 7.2 and 7.3 which prohibit any employee from acquiring or retaining any interest in the lands or resources administered by the Bureau of Land Management. The prohibition extends to any interest in land which in any manner is connected with or involves the use of the grazing resources administered by the Bureau of Land Management.

GRAZING LEASES--Continued

PREFERENCE RIGHT APPLICANTS--Continued

Donald E. and Nancy P. Jansen (On Reconsideration), 19 IBLA 154 (Mar. 14, 1975) 82 I.D. 93

Where the record does not clearly show whether either or both of two grazing lease applicants are preference right applicants and does not reflect consideration of all of the factors mandated by 43 CFR 4121.2-1(d)(2) for evaluating conflicting grazing lease applications, a decision awarding the lease to one of the parties will be set aside and the case remanded for further consideration.

Elmer M. Johnson, 20 IBLA 111 (Apr. 25, 1975)

A district manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon the regulatory criterion of historical use and there are no convincing reasons warranting a change of lessee.

George Annis, 20 IBLA 115 (Apr. 25, 1975)

The regulations governing Departmental employees' rights to hold a direct or indirect interest in public lands must be construed *in pari materia* with the regulations governing qualification to hold a grazing lease under sec. 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970). A nonemployee may be disqualified from holding a lease by his business relationship with an employee if the issuance of the lease would create an interest in public land proscribed by regulation.

Donald E. and Nancy P. Jansen (On Reconsideration), 23 IBLA 374 (Feb. 4, 1976)

In order to qualify as a preference right applicant for a grazing lease on public land under sec. 15 of the Taylor Grazing Act, the applicant must own or lawfully occupy contiguous private land the proper use of which requires issuance of a grazing lease. Use or occupancy of contiguous public land under a sec. 15 grazing lease does not, by itself, qualify to establish a preference right over contiguous owners or lawful occupants of private lands. The fact an applicant once owned contiguous land and had a lease for the land is irrelevant in determining his present preference status.

Ralph O. Lorenz, 24 IBLA 1 (Feb. 4, 1976)

A district manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon regulatory criteria including historical use and needs of the applicants, and there are no convincing reasons warranting a change of lessee.

Wesley Leininger, 28 IBLA 93 (Nov. 15, 1976)

GRAZING LEASES--Continued

PREFERENCE RIGHT APPLICANTS--Continued

A preference right applicant is properly determined to have lost control of non-Federal leased lands which constitute the basis for the preference and thereafter his sec. 15 grazing lease is subject to cancellation where (1) the lessor of the preference land notifies the BLM that the applicant's private lease has been terminated for delinquent rental; (2) the provisions of the private lease on record with the BLM clearly indicate the lessor has ample authority to cancel that lease at his discretion; and (3) after confrontation with these circumstances by a BLM show cause notice, the applicant does not deny he has lost control of his base lands, nor does he provide positive or substantive evidence that he still controls the private leased base lands.

Charles A. Mitchell, Jr., 30 IBLA 1 (Apr. 1, 1977)

In order to qualify as a preference right applicant for a grazing lease on public land under sec. 15 of the Taylor Grazing Act, the applicant must own or control contiguous or cornering private land, the proper use of which requires issuance of a grazing lease. The fact that an applicant once owned contiguous land and had a lease for the public land is irrelevant in determining his present preference status.

Where an area manager's decision divides the sec. 15 grazing use of a tract of public land between two applicants on the assumption that both are qualified preference right claimants, and it is determined on appeal that one claimant is not qualified, the decision will be set aside and the case remanded to the Bureau of Land Management for determination of the rights of the other applicant.

Mark E. Trask, 32 IBLA 395 (Nov. 9, 1977)

Priority of filing is not one of criteria listed in 43 CFR 4121.2-1(d)(2) for adjudicating conflicting grazing lease applications. Therefore, one appellant's filing for lease before other appellant gives former no rights superior to latter's.

Where record indicates no dispute that there was grazing use of public lands in issue from 1951 to 1975 by current grazing lease applicant's predecessors in interest, followed by 1-year hiatus in valid grazing use prior to current applicant's filing for lease, since length of hiatus was reasonable under circumstances, and since general intention of historical use criterion in 43 CFR 4121.2-1(d)(2) was not contradicted during break in valid grazing use, BLM was not arbitrary in applying historical use criterion in favor of one applicant in a case involving conflicting grazing lease applications. Here, hiatus was approximately one grazing season and was occasioned by purchase at foreclosure sale of preference lands by first mortgagee, who conveyed those lands 1 year later to current applicant, a grazing operator.

Considering record as a whole, Board concludes that neither of appellants has shown that District Office decision apportioning, on basis of historical use in favor of one appellant and topography in favor of other appellant, grazing lands between two lease applicants was arbitrary or capricious, or without rational basis, or inequitable.

John Rattray, Elmer L. Wilson, 36 IBLA 202 (Aug. 21, 1978)

Where two conflicting grazing lease applications are filed under the Taylor Grazing Act, *as amended*, 43 U.S.C. § 315m (1976), and one applicant owns base property of 320 acres which supports a preference right for the grazing lease, which base property the other applicant formerly leased from a previous owner to support a grazing lease, the grazing lease is properly issued to the applicant who is the present owner of the base property because such property has historically been used in connection with that grazing lease and the base controlled by the other applicant is only 80 acres.

Ted Crum, 40 IBLA 129 (Mar. 28, 1979)

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of FLPMA, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations.

Earl W. Platt, 43 IBLA 81 (Sept. 18, 1979) 86 I.D. 458

RENEWAL

A district manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon the regulatory criterion of historical use and there are no convincing reasons warranting a change of lessee.

George Annis, 20 IBLA 115 (Apr. 25, 1975)

A decision renewing a sec. 15 grazing lease and rejecting a conflicting application, rendered in compliance with the standard prescribed by 43 CFR 4121.2-1(d)(2), will not be overturned in the absence of convincing reasons that the award is not warranted.

Loyd Cornelison, 24 IBLA 155 (Mar. 15, 1976)

A grazing lease is properly denied when utilization of the leased property could have a substantial adverse effect on the environment and the Bureau of Land Management is under court order forbidding approval of such activity pending the preparation, filing and acceptance of an environmental impact statement.

Robert M. Jones, James E. Jones, 25 IBLA 93 (June 7, 1976)

The regulations do not require that a lessee be given advance notice of nonrenewal of a grazing lease, nor is he entitled to rely upon an asserted assurance that he could have the lease as long as he desired.

It is proper to reject an application for renewal of a grazing lease where the land applied for is of such character that livestock grazing would be detrimental to other uses of the land such as wildlife and recreational uses.

Carl Peterson, 25 IBLA 328 (June 30, 1976)

GRAZING LEASES--Continued

RENEWAL--Continued

Where a reduction in the authorized use of land leased pursuant to sec. 15 of the Taylor Grazing Act is required in order to conform to the actual grazing capacity of the land, the full amount of that reduction must be imposed immediately rather than gradually. Where acceptance of the reduction is made a condition precedent for the approval of an assignment and for the issuance of a new lease, the assignee and prospective lessee will be held to have the same right to appeal the reduction as the original lessee.

Rube W. Evans et al., 26 IBLA 15 (July 7, 1976)

A district manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon regulatory criteria including historical use and needs of the applicants, and there are no convincing reasons warranting a change of lessee.

Where a district manager renews a grazing lease and denies a conflicting application, he may require as a condition to continuance of the lease that the applicant for the lease renewal fence that portion of National Resource Lands adjacent to land leased by the conflicting applicant, in order to prevent trespass of the livestock belonging to the applicant for the lease renewal.

Wesley Leininger, 28 IBLA 93 (Nov. 15, 1976)

Where by final judgment a court has ordered that until an appropriate environmental impact statement is issued, the Bureau of Land Management will issue authorization for livestock grazing only on an annual basis, a grazing lease can be renewed only on an annual basis, even though the grazing unit has been pledged as security for a bona fide loan.

Ralph H. and Jacqueline L. Rainwater, 31 IBLA 377 (Aug. 8, 1977)

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring grazing lease receives first priority for the new lease if the requirements of sec. 402(c) are met. Therefore, a conflicting applicant is properly denied the lease where the renewal applicant meets those requirements.

Allen E. Prouse, 32 IBLA 311 (Sept. 30, 1977)
84 I.D. 874

George I. McDonald, Cascade Ranches, Inc., 35 IBLA 75 (May 12, 1978)

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring lease shall be given first priority for receipt of the new lease as long as the lessee is in compliance with the rules and regulations issued and the terms and conditions in the lease. Therefore, if the holder of an expiring lease loses control of the private property contiguous to public land which gave him a preference right to a lease under 43 CFR 4121.2-1(c), he is not entitled to first priority for receipt of a new lease.

Mark E. Frank, 32 IBLA 395 (Nov. 9, 1977)

GRAZING LEASES--Continued

RENEWAL--Continued

A decision renewing a grazing lease and rejecting a conflicting application which is rendered in accordance with the governing statutory standard set out in sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752(c) (___ Supp. 197_), will not be overturned in the absence of convincing reasons that the award is not warranted.

Past use of public land for grazing in trespass does not constitute cognizable historical use for the purpose of resolving conflicting applications for a grazing lease.

Fancher Bros., 33 IBLA 262 (Jan. 5, 1978)

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of FLPMA, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations.

Earl W. Platt, 43 IBLA 81 (Sept. 18, 1979) 86 I.D. 476

GRAZING PERMITS AND LICENSES

GENERALLY

A decision denying an application for 100 percent nonuse of grazing privileges and requiring applicants to initiate substantial active use within 2 years or suffer revocation of their base property qualifications will be affirmed where the applicant is not engaged in the livestock business, has not used his grazing privileges for many years, and where nonuse is not necessary for range conservation, animal health, or other justifiable cause.

Floyd and Corwin Silva, 20 IBLA 237 (May 15, 1975)

Where by final judgment a court has determined that an environmental impact statement must be filed under 42 U.S.C. § 4332 (1970) according to a particular schedule for the grazing lease program in a particular area, such an approved schedule will be followed by the Department.

Sidney Brooks et al., 22 IBLA 177 (Sept. 30, 1975)

The term "grazing trespass" as used in the context of the Federal Range Code refers to the grazing of livestock on Federal land without an appropriate license or permit or in violation of the terms and conditions of a license or permit, and not to any other special meaning ascribed under other laws and circumstances if inconsistent with this usage.

Although a respondent in a grazing license trespass hearing brought by the Bureau of Land Management has the right to be represented and aided by legal counsel, the Department has no duty or responsibility under the Constitution or the Administrative Procedure Act to provide such counsel for him.

Where a permittee was found to have committed repeated grazing trespasses, a fine of twice the commercial rate for foraging such animals was warranted in accordance with the regulations.

Where a grazing trespass is willful, grossly negligent, or repeated, disciplinary action in the form of suspension, reduction, or revocation, or denial of renewal of a grazing license or permit may be warranted. The

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

regulatory factors, together with any mitigating circumstances, should be considered to determine the extent of the reduction or other disciplinary action.

Where the record of a grazing trespass case does not support a finding of mitigating or extenuating circumstances which would warrant changing a 20-percent reduction of a grazing permittee's active use qualifications for two grazing seasons, an administrative law judge's order of such a reduction will be upheld.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

Sanctions may not be imposed upon a grazing license pursuant to 43 CFR 4113.1 for certain alleged activity, unless such activity violates the terms or conditions of the license, the Taylor Grazing Act, a provision of 43 CFR Part 4110, or of any approved special rule.

The Secretary of the Interior or his delegate is not obligated to issue a grazing permit or license to an applicant; the issuance of such permits or licenses is committed to agency discretion; therefore, the Secretary may refuse to issue or to renew such license where the applicant, to enhance his grazing operation, has violated the terms of a statute or regulation prohibiting the killing of wildlife.

Renewal of a grazing license by a district manager is not an abuse of discretion where the licensee is accused of illegally killing bald and golden eagles but no administrative hearing or judicial proceeding has yet been held to determine said licensee's guilt, where nonrenewal would not necessarily prevent the licensee from continuing to graze cattle pending disposition of such proceeding, and where the renewed license contains a provision allowing for its reduction, cancellation, or revocation in the event the licensee is found to have illegally killed eagles after an administrative or judicial proceeding.

Where the transferee of a grazing license has knowledge that such license might be in jeopardy because of illegal activities allegedly involving his transferor, a hearing to determine the guilt of the transferor would serve no useful purpose where the alleged principal culprit of the illegal activities is dead, all criminal charges against the transferor have been dismissed, and the transfer itself does not appear to have been made to escape the imposition of sanctions.

National Wildlife Federation (Appellant) v. Bolton Ranch, Inc. (Respondent), 24 IBLA 391 (May 3, 1976)

Where the number of cattle grazing on the Federal range exceeds the number allowed by license and such excess is attributable solely to appellants' lack of control over their cattle and their lack of diligence in taking corrective action after being informed by the Bureau that the excess existed, a finding of willful trespass is warranted.

Cesar and Robert Siard, 26 IBLA 29 (July 8, 1976)

A district manager's decision denying a grazing permit for 10 domestic horses, based on the fact that such a denial was required for proper range management and for protection of wild horses under the Wild Free-Roaming Horses and Burros Act, 85 Stat. 649-51, will be overruled where evidence presented at a hearing shows that granting the permit will not interfere with BLM's management of the wild horses under the Act.

Chester Baker, 26 IBLA 257 (Aug. 18, 1976)

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

A grazing permittee under sec. 3 of the Taylor Grazing Act does not have an absolute right to a permit renewal even though denial thereof will impair the value of his grazing unit which is pledged as security for a bona fide loan. The Department may refuse to renew such a permit when the public interest requires that the subject land be preserved from unnecessary injury, exchanged, disposed of, or reclassified for alternate public use. Similarly, if the Department may deny renewal outright under the above circumstances, the Department may renew such a permit for a lesser term than previously allowed pending completion of a Management Framework Plan and an Allotment Management Plan which are oriented not only to livestock grazing, but also to multiple use management which includes such concerns as land and water conservation, environmental protection, and other resource management objectives which can be achieved by reclassification of national resource lands and manipulation of grazing activity.

"Such permit" as used in sec. 3 of the Taylor Grazing Act, 43 U.S.C. § 315b (1970), providing for a renewal of a grazing permit does not mean only a permit identical with the terms and provisions of the original.

Where by final judgment a court has ordered that until an appropriate environmental impact statement is issued the BLM will issue authorization for livestock grazing only on an annual basis, a grazing permit can be renewed for only 1 year, even though the grazing unit has been pledged as security for a bona fide loan.

[illegible] Ranch, Inc., 27 IBLA 340 (Nov. 4, 1976) 83 I.D. 582

Where a range survey was conducted giving no consideration to annual forage growth and there is evidence that annual forage plants, at times, comprise up to 50 percent of the available forage; that cattle prefer annual forage; that some annual forage was available even in the very dry survey year; annual forage growth should be considered in determining the carrying capacity of the Federal range.

Rachel [illegible], [illegible] and [illegible],
28 IBLA 264 (Dec. 20, 1976)

An agreement between the BLM, a State Cooperative State Grazing District, and an individual permittee allocating a share of the Federal range for which base properties are qualified does not create a vested right to grazing privileges in the licensee or permittee, but the grazing privileges remain subject to the Federal Range Code.

Where an agreement with State agencies and the BLM is made subject to all the provisions of the Federal Range Code, the provisions of the Range Code pertaining to the transfer of range privileges and loss of base property are controlling.

Where the base property to which grazing privileges are attached is National Wildlife Range administered by the U.S. Fish and Wildlife Service, which leases the property through cooperative farming agreements to private individuals for farming, FWS's determination of who is its lessee must be accepted by the BLM.

The issuance of a grazing license for the next grazing year to a new lessee for lands in a National Wildlife Range administered by the United States Fish and Wildlife Service is not premature when the FWS has stated that the existing lease has been terminated and a new one for the next year issued to the new licensee.

The issuance of a grazing license to an applicant who controls base property, to which grazing privileges

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

have been historically attached, and who can demonstrate that he has a year round operation, is not arbitrary or capricious.

Allan Stratman (President), Two Crow Land & Cattle Co. and William Bow, Jr. (Manager), Two Crow Ranch Corp. (Appellants) v. Bureau of Land Management (Respondent), William Harris (Intervenor), 30 IBLA 203 (May 31, 1977)

In an appeal before an administrative law judge of a decision adversely affecting the interests of a grazing licensee, upon the failure of the licensee to appear and to present his case, the administrative law judge may properly dismiss the licensee's grazing appeal with prejudice pursuant to 43 CFR 4.474(b).

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

Where there is a final administrative determination of the assessment of damages for a grazing trespass by a licensee, no license or permit should thereafter be issued or renewed until payment of the assessed amount.

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

Holders of grazing permits under sec. 3 of the Taylor Grazing Act whose permits give them grazing rights for public lands which are subsequently traversed by a power line right-of-way grant have standing to appeal the decision granting the right-of-way.

David Smith Ranches et al. (Appellants), Colorado Ute Electric Ass'n, Inc. (Intervenor), 33 IBLA 7 (Nov. 15, 1977)

A decision of a district manager to consolidate and assign fence maintenance responsibilities to various grazing permittees will be upheld on appeal where a permittee attacking such decision fails to establish that the assignment was arbitrary and capricious.

Bert N. Smith, Paul N. Smith v. Bureau of Land Management et al., 36 IBLA 47 (June 30, 1978)

Where BLM reduced grazier's privileges because of his loss of ownership of base property from which his qualifications had not in fact been transferred away for attachment to other property owned by grazier, equitable estoppel is not invoked against BLM since grazier by his own testimony at hearing showed that he was not ignorant of true facts as to lack of transfer back of grazing qualifications and that he did not in fact rely to his detriment on BLM official's representations on that transfer back.

Duane J. Rasmussen, 36 IBLA 90 (July 13, 1978)

A decision made under 43 CFR 4.470 *et seq.* regarding future use of the Federal Range will be set aside if it is necessary that issues involved therein be considered under regulations newly promulgated pursuant to Federal Land Policy and Management Act of 1976.

United States v. View Point Ranches, 37 IBLA 357 (Oct. 31, 1978)

Estoppel to preclude a charge of trespass is not invoked against BLM where BLM's partially completed fences on Federal land do not restrain cattle and there is no evidence that BLM agreed to construct and/or maintain said fences for the benefit of the grazier, and such grazier was at all times aware of these facts.

The grazing regulations (43 CFR 4140.1(b)(1), *inter alia*) (formerly 43 CFR 4112.3-1(a) and (b)) place the responsibility of controlling cattle squarely on the grazier, and Government range management policies as implemented under acts of Congress cannot be asserted to bar sanctions where trespasses have been proved, or to estop BLM from alleging trespasses.

An administrative law judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by two administrative law judges for trespasses are supported by the records and comport with the prescriptions of the regulations they will not be modified on appeal except insofar as they conflict with respect to a particular grazier in a particular grazing district.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

Where an applicant for a range improvement project involving alteration of the Native range by reseeding with non-Native species and requiring the expenditure of a large sum of public funds does not show that there is an urgent situation requiring immediate improvement of the range as proposed, a decision by the BLM range manager denying the application because management framework and allotment management plans have not been formulated is properly affirmed, as, ordinarily, such a venture should not be undertaken without the type of information these plans are intended to provide.

Lloyd Sorensen, Von L. Sorensen, Kenneth Jones, 41 IBLA 354 (July 20, 1979)

Past trespass, trespass damages, and trespass settlements may properly be considered in determining whether trespasses are repeated for the purpose of computing the damages to be assessed.

Bureau of Land Management v. Harris Brothers, 42 IBLA 46 (July 31, 1979)

ADJUDICATION

A decision by a district manager denying a requested award of grazing privileges must state the reasons therefore, and not simply the conclusion that the applicant is not qualified.

Ervin J. Crowder, 20 IBLA 305 (May 30, 1975)

GRAZING PERMITS AND LICENSES--Continued

ADJUDICATION--Continued

An application for grazing privileges based on newly discovered past grazing qualifications is properly rejected when licenses and permits have been issued for more than 3 consecutive years based on the allotment adjudication from which the application at issue seeks to deviate. 43 CFR 4115.2-1(e)(13)(i).

Phil J. Hillberry, 24 IBLA 283 (Mar. 31, 1976)

An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal Range Code for Grazing Districts, 43 CFR Part 4110.

Rachel Ballow, Henry A. Rice and Sam J. Johnson,
28 IBLA 264 (Dec. 20, 1976)

Where an applicant for grazing privileges does not show the type of misconduct which would be a basis for estoppel against the Government, the provisions of 43 CFR 4115.2-1(e)(9)(i) and (e)(13)(i) cannot be waived on the basis of such misconduct.

Where base property qualifications have been recognized and grazing licenses thereon have been granted for 3 or more consecutive years to a third party, an applicant is barred by 43 CFR 4115.2-1(e)(13)(i) from seeking readjudication, although the Bureau of Land Management has the authority under subsec. (e)(13)(ii) to make adjustments when necessary to comply with the Federal Range Code for Grazing Districts.

Upon failure to apply for base property qualifications for 2 consecutive years, under 43 CFR 4115.2-1(e)(9)(i) an applicant loses any claim to grazing privileges which he had transferred to another, where the exceptions in the section are not applicable.

Upon approval of an application for transfer of class 1 qualifications, the transfer is effective as of the date of filing of the application, and the base property from which the transfer is made thereupon loses its qualifications to the extent indicated in the transfer.

A. D. Findley (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

A decision made under 43 CFR 4.470 *et seq.* regarding future use of the Federal Range will be set aside if it is necessary that issues involved therein be considered under regulations newly promulgated pursuant to Federal Land Policy and Management Act of 1976.

United States v. View Point Ranches, 37 IBLA 357
(Oct. 31, 1978)

ADMINISTRATIVE LAW JUDGE

In an appeal before an administrative law judge of a decision adversely affecting the interests of a grazing licensee, upon the failure of the licensee to appear and to present his case, the administrative law judge may properly dismiss the licensee's grazing appeal with prejudice pursuant to 43 CFR 4.474(b).

Fillmore Ranches, 30 IBLA 202 (June 1, 1977)

GRAZING PERMITS AND LICENSES--Continued

ADMINISTRATIVE LAW JUDGE--Continued

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an administrative law judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174
(Sept. 15, 1977) 84 I.D. 475

APPEALS

The doctrine of administrative finality, the administrative counterpart of res judicata, ordinarily bars reopening the issue of a permittee's class 1 base property qualifications resolved in a prior Departmental decision, but will not prevent modification of a decision to correct a conclusion inconsistent with the legal ruling of the case and apparently the result of an oversight as to the basis of the factual finding upon which it relies.

E. T. Cowgill et al., 19 IBLA 274 (Apr. 7, 1975)

While 43 CFR 4.470(b) bars subsequent challenge to "matters adjudicated" in a final decision of a District Manager when no appeal of that decision is undertaken, the presence or absence of excess forage in successive growing seasons is not a matter subject to this prohibition.

A decision by a district manager denying a requested award of grazing privileges must state the reasons therefore, and not simply the conclusion that the applicant is not qualified.

Ervin J. Crowder, 20 IBLA 305 (May 30, 1975)

Appellant's earlier failure to protest and appeal a decision rejecting his challenge to another grazier's base property commensurability rating, bars him from appealing a subsequent decision rejecting an application containing the same challenge.

A district manager's failure to hold an Advisory Board meeting on a grazing applicant's protest is mooted by a subsequent regulatory amendment terminating graziers' rights to an Advisory Board meeting on protests. In any event, the case would not be remanded for such a meeting when there is no prejudice because the applicant is foreclosed by the grazing regulations from the possibility of prevailing on his protest.

Phil J. Hillberry, 24 IBLA 283 (Mar. 31, 1976)

The right to appeal a decision of a district manager is not necessarily limited to an applicant for a grazing license or permit, but may belong to "any other person" adversely affected by such decision. 43 CFR 4.470(a) and (b).

Any other person within the context of 43 CFR 4.470 includes one who has standing to protest or appeal a decision of the district manager. An organization which alleges that one or more of its members has been adversely affected by such a decision may be considered "any other person" within the meaning of the regulation.

National Wildlife Federation (Appellant) v. Eclipse Ranch, Inc. (Respondent), 24 IBLA 341 (May 3, 1976)

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

In an appeal before an administrative law judge of a decision adversely affecting the interests of a grazing licensee, upon the failure of the licensee to appear and to present his case, the administrative law judge may properly dismiss the licensee's grazing appeal with prejudice pursuant to 43 CFR 4.474(b).

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

When a Federal grazing permittee signs a written trespass settlement and pays, without protest, the amount claimed by BLM in connection with such settlement, the issue of that trespass cannot later be reopened at a hearing before an administrative law judge.

Cloverleaf Land and Livestock Co., 34 IBLA 113 (Feb. 28, 1978)

A decision of a district manager to consolidate and assign fence maintenance responsibilities to various grazing permittees will be upheld on appeal where a permittee attacking such decision fails to establish that the assignment was arbitrary and capricious.

Bert N. Smith, Paul N. Smith v. Bureau of Land Management et al., 36 IBLA 47 (June 30, 1978)

An appeal from a decision of an administrative law judge dismissing an appeal relating to grazing privileges for failure to state clearly and concisely the reasons for appeal will be dismissed where appellant does not clearly show error in the decision being appealed.

Kendall Brady, 42 IBLA 361 (Aug. 31, 1979)

BASE PROPERTY (LAND)

Generally

The doctrine of administrative finality, the administrative counterpart of res judicata, ordinarily bars reopening the issue of a permittee's class 1 base property qualifications resolved in a prior Departmental decision, but will not prevent modification of a decision to correct a conclusion inconsistent with the legal ruling of the case and apparently the result of an oversight as to the basis of the factual finding upon which it relies.

T. T. Cowgill et al., 19 IBLA 274 (Apr. 7, 1975)

An application for grazing privileges based on newly discovered past grazing qualifications is properly rejected when licenses and permits have been issued for more than 3 consecutive years based on the allotment adjudication from which the application at issue seeks to deviate. 43 CFR 4115.2-1(e)(13)(i).

Phil J. Hillberry, 24 IBLA 263 (Mar. 31, 1976)

Land within a National Wildlife Range administered by the United States Fish and Wildlife Service and leased to individuals through a cooperative farming agreement is privately controlled land within the meaning of the pertinent regulations and qualifies base property.

GRAZING PERMITS AND LICENSES--Continued

BASE PROPERTY (LAND)--Continued

Generally--Continued

Allen Strateman (President), Two Crow Land & Cattle Co., and William Roe, Jr. (Manager), Two Crow Ranch Corp. (Appellants) v. Bureau of Land Management (Respondent), William Harris (Intervenor), 30 IBLA 243 (May 31, 1977)

Ownership or Control

Under 43 CFR 4115.2-1(e)(8), loss of ownership or control of base property results in the termination of grazing privileges based on such property so that thereafter it is not possible to obtain a transfer of the privileges to other property owned by the lessee.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

Where an agreement with State agencies and the BLM is made subject to all the provisions of the Federal Range Code, the provisions of the Range Code pertaining to the transfer of range privileges and loss of base property are controlling.

Under 43 CFR 4115.2-1(e)(8) loss of base property results in the termination of grazing privileges based thereon so that thereafter it is not possible to obtain the transfer of the privileges to other property owned by the licensee.

Allen Strateman (President), Two Crow Land & Cattle Co., and William Roe, Jr. (Manager), Two Crow Ranch Corp. (Appellants) v. Bureau of Land Management (Respondent), William Harris (Intervenor), 30 IBLA 243 (May 31, 1977)

The loss of ownership or control of base property results in the loss of grazing privileges attached thereto and requires the cancellation of the license, in the absence of a timely application for transfer of grazing privileges to new base property.

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

Provision of 43 CFR 4115.2-1(e)(8)(i) for termination of grazing permit upon permittee's loss of ownership or control of base property is mandatory.

Roger J. Rasmussen, 36 IBLA 98 (July 13, 1978)

Where a grazing permittee owned base property taken in condemnation proceedings by the United States, but a Federal district court has stayed the United States from taking exclusive possession of the property and granted joint possession to the condemnor agency and the permittee pending disposition of an appeal on a motion to revest the property in the permittee, implementation of a decision canceling grazing privileges for loss of control of base property under 43 CFR 4110.1 (1977) will be stayed in accordance with the court order.

Bureau of Land Management v. William J. Thomas, 41 IBLA 110 (June 11, 1979)

GRAZING PERMITS AND LICENSES--Continued

BASE PROPERTY (LAND)--Continued

Transfers

Under 43 CFR 4115.2-1(e)(8), loss of ownership or control of base property results in the termination of grazing privileges based on such property so that thereafter it is not possible to obtain a transfer of the privileges to other property owned by the lessee.

Charles Stewart. 26 IBLA 160 (Aug. 4, 1976)

Where an agreement with State agencies and the BLM is made subject to all the provisions of the Federal Range Code, the provisions of the Range Code pertaining to the transfer of range privileges and loss of base property are controlling.

Under 43 CFR 4115.2-1(e)(8) loss of base property results in the termination of grazing privileges based thereon so that thereafter it is not possible to obtain the transfer of the privileges to other property owned by the licensee.

Where an applicant for a transfer of grazing privileges attached to base property is not a lessee without whose own operations the qualifications of the base property would not have been established, the consent of the owner of the property is required and where the United States Fish and Wildlife Service owns or controls the base properties, its consent is required.

Allan Stratman (President), Two Crow Land & Cattle Co. and William Roe, Jr. (Manager), Two Crow Ranch Corp. (Appellants) v. Bureau of Land Management (Respondent), William Harris (Intervenor). 30 IBLA 263 (May 31, 1977)

A timely transfer of grazing license privileges to new base property may be made only while the original base property is within the ownership or control of the licensee, and transfer may not be made following sale of the original property.

Fillmore Ranches. 30 IBLA 282 (June 1, 1977)

BASE PROPERTY (WATER)

Where base property qualifications have been recognized and grazing licenses thereon have been granted for 3 or more consecutive years to a third party, an applicant is barred by 43 CFR 4115.2-1(e)(13)(i) from seeking readjudication, although the Bureau of Land Management has the authority under subsec. (e)(13)(ii) to make adjustments when necessary to comply with the Federal Range Code for Grazing Districts.

Upon failure to apply for base property qualifications for 2 consecutive years, under 43 CFR 4115.2-1(e)(9)(i) an applicant loses any claim to grazing privileges which he had transferred to another, where the exceptions in the section are not applicable.

Upon approval of an application for transfer of class 1 qualifications, the transfer is effective as of the date of filing of the application, and the base property from which the transfer is made thereupon loses its qualifications to the extent indicated in the transfer.

R. G. Fielder (Appellant), Vermillion Cliff Cattle Co. (Intervenor). 29 IBLA 262 (Mar. 25, 1977)

GRAZING PERMITS AND LICENSES--Continued

CANCELLATION OR REDUCTION

A decision denying an application for 100 percent nonuse of grazing privileges and requiring applicants to initiate substantial active use within 2 years or suffer revocation of their base property qualifications will be affirmed where the applicant is not engaged in the livestock business, has not used his grazing privileges for many years, and where nonuse is not necessary for range conservation, animal health, or other justifiable cause.

Floyd and Corwin Silva. 30 IBLA 237 (May 17, 1977)

The term "two consecutive years" in 43 CFR 4115.2-1(e)(9) means 2 consecutive application years from the date established by a district manager as the deadline for filing grazing applications.

Under 43 CFR 4115.2-1(e)(9), cancellation of a grazing license is proper when a user of the Federal range fails to include in an application for grazing license renewal, the base property qualifications (for active, nonuse, or combination thereof) on or before the duly established filing date for two consecutive grazing seasons, regardless of whether the lands surrounding the leased lands are controlled by licensee and his relatives.

John Rudzroth. 21 IBLA 91 (June 27, 1975)

Where a grazing trespass is willful, grossly negligent, or repeated, disciplinary action in the form of suspension, reduction, or revocation, or denial of renewal of a grazing license or permit may be warranted. The regulatory factors, together with any mitigating circumstances, should be considered to determine the extent of the reduction or other disciplinary action.

Where the record of a grazing trespass case does not support a finding of mitigating or extenuating circumstances which would warrant changing a 20-percent reduction of a grazing permittee's active use qualifications for two grazing seasons, an administrative law judge's order of such a reduction will be upheld.

Eldon Brinkerhoff. 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

Under 43 CFR 4115.2-1(e)(8), loss of ownership or control of base property results in the termination of grazing privileges based on such property so that thereafter it is not possible to obtain a transfer of the privileges to other property owned by the lessee.

Even if it be established that the Department had not applied in other cases regulation 43 CFR 4115.2-1(e)(8), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart. 26 IBLA 160 (Aug. 4, 1976)

A grazing permittee under sec. 3 of the Taylor Grazing Act does not have an absolute right to a permit renewal even though denial thereof will impair the value of his grazing unit which is pledged as security for a bona fide loan. The Department may refuse to renew such a permit when the public interest requires that the subject land be preserved from unnecessary injury, exchanged, disposed of, or reclassified for alternate

GRAZING PERMITS AND LICENSES--Continued

CANCELLATION OR REDUCTION--Continued

public use. Similarly, if the Department may deny renewal outright under the above circumstances, the Department may renew such a permit for a lesser term than previously allowed pending completion of a Management Framework Plan and an Allotment Management Plan which are oriented not only to livestock grazing, but also to multiple use management which includes such concerns as land and water conservation, environmental protection, and other resource management objectives which can be achieved by reclassification of national resource lands and manipulation of grazing activity.

Hat Ranch, Inc., 27 IBLA 340 (Nov. 4, 1976) 83 I.D. 542

The loss of ownership or control of base property results in the loss of grazing privileges attached thereto and requires the cancellation of the license, in the absence of a timely application for transfer of grazing privileges to new base property.

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

Under 43 CFR 9239.3-2(e), the repetitive nature of grazing trespasses coupled with a negligent failure of licensee to take corrective action supports a finding of willful trespass.

Calvin C. Johnson, 35 IBLA 306 (June 2, 1978)

Provision of 43 CFR 4115.2-1(e)(8)(i) for termination of grazing permit upon permittee's loss of ownership or control of base property is mandatory.

Roger J. Rasmusson, 36 IBLA 98 (July 13, 1978)

An administrative law judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by two administrative law judges for trespasses are supported by the records and comport with the proscriptions of the regulations they will not be modified on appeal except insofar as they conflict with respect to a particular grazier in a particular grazing district.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

FEDERAL RANGE CODE

Where base property qualifications have been recognized and grazing licenses thereon have been granted for 3 or more consecutive years to a third party, an applicant is barred by 43 CFR 4115.2-1(e)(13)(i) from seeking readjudication, although the Bureau of Land Management has the authority under subsec. (e)(13)(ii) to make adjustments when necessary to comply with the Federal Range Code for Grazing Districts.

Upon failure to apply for base property qualifications for 2 consecutive years, under 43 CFR 4115.2-1(e)(9)(i) an applicant loses any claim to grazing privileges which he had transferred to another, where the exceptions in the section are not applicable.

Upon approval of an application for transfer of class 1 qualifications, the transfer is effective as of the date of filing of the application, and the base property from which the transfer is made thereupon loses its qualifications to the extent indicated in the transfer.

A. C. Findley (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

A decision made under 43 CFR 4.470 et seq. regarding future use of the Federal Range will be set aside if it is necessary that issues involved therein be considered under regulations newly promulgated pursuant to Federal Land Policy and Management Act of 1976.

United States v. View Point Ranches, 37 IBLA 357 (Oct. 31, 1978)

HEARINGS

In an appeal before an administrative law judge of a decision adversely affecting the interests of a grazing licensee, upon the failure of the licensee to appear and to present his case, the administrative law judge may properly dismiss the licensee's grazing appeal with prejudice pursuant to 43 CFR 4.474(b).

Fillmore Ranches, 30 IBLA 282 (June 1, 1977)

RANGE SURVEYS

A determination by the Bureau of Land Management of the carrying capacity of a unit of the Federal range based on a range survey will not be disturbed in the absence of positive evidence of error.

Rachel Ballow, Henry A. Rice and Sam J. Johnson, 28 IBLA 264 (Dec. 20, 1976)

TRESPASS

A cattle trespass decision rendered by an administrative law judge may be set aside and remanded where the decision does not include a statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion as required for initial decisions under 5 U.S.C. § 557 (1970) and 43 CFR 4.475.

Where a grazing district cattle trespass complaint refers to previous trespasses by the base property owner, he is served with the complaint, and the record indicates he intervened at the hearing thereon but the decision issued makes no mention thereof, the decision appealed from may be set aside and remanded for clarification.

United States v. John J. Casey, 22 IBLA 358 (Nov. 14, 1975) 82 I.D. 546

The term "grazing trespass" as used in the context of the Federal Range Code refers to the grazing of livestock on Federal land without an appropriate license or permit or in violation of the terms and conditions of a license or permit, and not to any other special meaning ascribed under other laws and circumstances if inconsistent with this usage.

Where a permittee was found to have committed repeated grazing trespasses, a fine of twice the commercial rate for foraging such animals was warranted in accordance with the regulations.

Where a grazing trespass is willful, grossly negligent, or repeated, disciplinary action in the form of suspension, reduction, or revocation, or denial of renewal

GRAZING PERMITS AND LICENSES--Continued

TRESPASS--Continued

of a grazing license or permit may be warranted. The regulatory factors, together with any mitigating circumstances, should be considered to determine the extent of the reduction or other disciplinary action.

In determining whether grazing trespasses are "willful," intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake, or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Where the record of a grazing trespass case does not support a finding of mitigating or extenuating circumstances which would warrant changing a 20-percent reduction of a grazing permittee's active use qualifications for two grazing seasons, an administrative law judge's order of such a reduction will be upheld.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

Where the number of cattle grazing on the Federal range exceeds the number allowed by license and such excess is attributable solely to appellants' lack of control over their cattle and their lack of diligence in taking corrective action after being informed by the Bureau that the excess existed, a finding of willful trespass is warranted.

Where, in an effort to negotiate a compromise settlement of an alleged grazing trespass, a rancher concedes that the trespass occurred to the extent of a specific number of animal unit months of forage, but the proposed settlement is not consummated and the case goes to a hearing on its merits, evidence of the purported admissions made by the party during such negotiations must be excluded as not competent to show either the fact or the extent of the trespass alleged.

Where it has been determined that a grazing trespass on the Federal range is clearly willful, the value of the forage consumed shall be computed and assessed at $4 per animal unit month, or twice the commercial rate if such amount is higher. Where the commercial rate is $4.90, the assessment of damages shall be at the rate of $9.80 per animal unit month.

Cesar and Robert Siard, 26 IBLA 29 (July 8, 1976)

One who grazes livestock in a grazing allotment without authorization prior to the issuance of a license commits a grazing trespass.

Under existing regulations, where a grazing trespass is not clearly willful, damages are to be computed at the rate of $2 per AUM of Federal forage consumed or the commercial rate, whichever is greater.

Where there is a final administrative determination of the assessment of damages for a grazing trespass by a licensee, no license or permit should thereafter be issued or renewed until payment of the assessed amount.

When 33 percent of the available forage in a grazing allotment is on Federal land and the remainder is on private land, it is appropriate to find that 33 percent of the forage consumed by cattle throughout the allotment was Federal forage, in the absence of evidence to the contrary.

Pursuant to the Property Clause of the U.S. Const. art. IV, § 3, cl. 2, Congress has enacted the Taylor Grazing Act, 43 U.S.C. § 315 et seq. (1970), and other statutory authority which empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and to determine whether or not an individual has committed a trespass.

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an administrative law judge is employed by the Department of the Interior.

Where cattle are admitted to an allotment at the beginning of the usual grazing season but prior to the issuance of a license for that season, and payment is later made by a check which recites that it is "payment in full for 1975 grazing fee," the Bureau of Land Management may properly deposit the check, allotting part of the proceeds for the grazing license for the rest of the season, and deposit the remainder of the proceeds in a suspense account pending resolution of the trespass. Such action indicates that the check was not accepted in settlement of the trespass damages, and cashing the check does not constitute an accord and satisfaction of the trespass damages.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174
(Sept. 15, 1977)
84 I.D. 475

Where the owner of base property ranchland formally leases out grazing privileges on his own lands and on appurtenant Federal lands, all stock subsequently grazed by the lessee under the terms of the lease will be attributed to the lessor for purposes of calculating trespass liability.

A BLM decision canceling base property qualifications for allegedly willful and repeated trespass is properly voided on appeal where such violations were not charged in the initial Order to Show Cause, and where such Order to Show Cause was not issued by the State Director as is required by 43 CFR 9239.3-2(e).

The retroactive issuance of a grazing permit for livestock foraging on Federal rangeland will moot a charge of trespass to the extent that such permit covers the same days, livestock, and rangelands which are the subject of the trespass charge.

Cloverleaf Land and Livestock Co., 34 IBLA 113
(Feb. 28, 1978)

Under 43 CFR 9239.3-2(e), the repetitive nature of grazing trespasses coupled with a negligent failure of licensee to take corrective action supports a finding of willful trespass.

On appeal from a show cause proceeding under 43 CFR 9239.3-2(e), a requirement for ear-tagging of cattle recommended by a district manager and imposed by an administrative law judge will be set aside where the grazer objected thereto and was not accorded proper opportunity to offer evidence thereon. 43 CFR 4112.3-2(a)(4).

Calvin C. Johnson, 35 IBLA 306 (June 2, 1978)

GRAZING PERMITS AND LICENSES--Continued

TRESPASS--Continued

Where the alleged trespasser makes no allegations of a specific and substantial nature regarding whether or not a trespass has in fact occurred, the procedure authorized by 43 CFR 9239.3-2(c)(4) limiting a hearing "to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass" does not result in a denial of due process.

A hearing on the issue of whether or not a trespass was willful or not clearly willful is authorized by 43 CFR 9239.3-2(c)(4) because a finding on this issue affects the rate at which the value of the forage consumed shall be computed pursuant to 43 CFR 9239.3-2(c)(2).

In determining whether grazing trespasses are willful, intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Since a grazing trespass is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Evidence is insufficient to support a finding of a willful trespass where it fails to show that the alleged trespasser intended to disregard the regulation prohibiting trespass or that he was plainly indifferent to its requirements or that he acted with gross neglect of a known duty.

Where the administrative law judge does not make a finding as to whether a trespass was willful or not clearly willful, the Board of Land Appeals may make this finding based upon the record as if it were sitting as trier of fact.

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(3) do not violate due process.

The Property Clause of the United States Constitution art. IV, § 3, cl. 2, gives Congress the power over the public lands "to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them." When Congress so acts, the Federal legislation necessarily overrides conflicting State laws under the Supremacy Clause. U.S. Constitution art. IV, cl. 2.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

Where the evidence as to specific trespass indicates that of a number of cattle counted some were located on private intermingled land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands.

An administrative law judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by two administrative law judges for trespasses are supported by the records and comport with the proscriptions of the regulations they will not be modified on appeal except insofar as they conflict with respect to a particular grazier in a particular grazing district.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 1

Past trespass, trespass damages, and trespass settlements may properly be considered in determining whether trespasses are repeated for the purpose of computing the damages to be assessed.

Where the evidence shows that the commercial rate for forage ranged from $2.50 to $9.50 per AUM, an Administrative Law Judge's computation of damages, using $3.50 as the base figure, cannot be said to be unreasonable under 43 CFR 9239.3-2 (1976).

Bureau of Land Management v. Harris Brothers, 42 IBLA 4 (July 31, 1979)

HEARINGS

(See also Administrative Procedure, Civil Rights, Endangered Species Conservation Act, Federal Coal Mine Health and Safety Act of 1969, Federal Metal and Nonmetallic Mine Safety Act, Geothermal Leases, Grazing Permits and Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resources Act, Water Pollution Control--if included in this Index.)

Where the party bearing the risk of nonpersuasion does not appear at a hearing ordered pursuant to 43 CFR 4.415, that party's appeal is properly dismissed.

Stanley G. West, 18 IBLA 337 (Jan. 10, 1975)

Where one who protests the performance and acceptance of a survey of land, identified by the cadastral engineer making the survey as public domain land, offers probative evidence that changes arose because of avulsion rather than accretion and so the land is not in fact Federally owned, a hearing will be ordered to receive and consider such evidence and to ascertain the facts.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

If an applicant for a headquarters site does not allege facts that, if taken as true, show that she uses the site in connection with a trade, manufacture, or other productive industry, the Bureau of Land Management may cancel her claim without a hearing.

LaVeta C. Schoephorster, 19 IBLA 90 (Mar. 3, 1975)

When an appellant asserts facts which do not on their face sustain the contentions on appeal, this Board will deny a request for a hearing to determine the asserted issues of fact. 43 CFR 4.415.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 129 (Mar. 5, 1975)

HEARINGS--Continued

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970), (2) there are no intervening rights, (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable state statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 *et seq*., and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

Where at a hearing held pursuant to sec. 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

Under the Mining Claims Occupancy Act, 30 U.S.C. § 701 *et seq*. (1970), where the record includes a statement as to a principal place of residence which conflicts with a more detailed statement made under oath by the same person, the matter may be remanded for hearing in order to resolve the conflict and protect the rights of a third party.

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

An applicant for a Native allotment has no right to a hearing, and none is required where there is no offer of proof which indicates that the findings of the State Office were incorrect, or where an offer of evidence is unaccompanied by a satisfactory explanation why it was not submitted to the State Office within the time provided.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary with the Secretary of the Interior. A hearing is not appropriate when there is no offer of proof which if established would impel a different legal conclusion.

Kathryn Kluska, 23 IBLA 284 (Jan. 12, 1976)

Under 43 CFR 2802.1-7(e), which provides that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Following a hearing under 43 CFR 2802 1-7, a decision increasing the charges for use and occupancy of a communication site is in error to the extent that the decision is based upon unspecified evidence not in the record and not made known to the user, and the decision must be set aside.

American Telephone and Telegraph Co. et al., 25 IBLA 341 (June 30, 1976)

HEARINGS--Continued

The allowance of a request for a hearing before an administrative law judge in a protest against a survey by the Bureau of Land Management is within the discretion of the Board of Land Appeals. There is no right to such a hearing.

R. A. Mikelson, 26 IBLA 1 (July 6, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy R. Cummins, 26 IBLA 223 (Aug. 17, 1976)

Where the Bureau of Land Management determines that an Alaska Native allotment application should be rejected because the land was not used and occupied by the applicant, the BLM shall issue a contest complaint pursuant to 43 CFR 4.451 *et seq*. Upon receiving a timely answer to the complaint, which answer raises a disputed issue of material fact, the Bureau will forward the case file to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, for assignment of an administrative law judge, who will proceed to schedule a hearing at which the applicant may produce evidence to establish entitlement to his allotment.

Donald Peters, 26 IBLA 235 (Aug. 17, 1976)
83 I.D. 308

John Moore et al., 40 IBLA 321 (Apr. 30, 1979)
86 I.D. 279

Under 43 CFR 2802.1-7(e), which provides that charges for a right-of-way on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Paradise Oil, Water and Land Development, Inc., 26 IBLA 374 (Sept. 8, 1976)

Under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7(a), an applicant has no right to a hearing in connection with original charges for use and occupancy of a communication site, and a hearing pursuant to a request under 43 CFR 4.415 will not be granted where applicant fails to make specific allegations or offer specific proof to show in what factors a Departmental appraisal is in error.

Mountain States Telephone and Telegraph Co., 26 IBLA 393 (Sept. 16, 1976)
83 I.D. 332

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and Directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

HEARINGS--Continued

Service of a document upon a person's attorney of record constitutes effective service upon such person.

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the administrative law judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

Where a mineral examiner testifies on the basis of his examination of mining claims that the mineral values on the claims are insufficient to support a finding of discovery, a prima facie case against the validity of the claims has been established, and where the contestees walked out of the hearing and did not submit evidence to rebut the prima facie case, the claims must be declared invalid.

United States v. Mine Development Corp. et al., 27 IBLA 238 (Oct. 18, 1976)

Where the Bureau of Land Management orders a resurvey of a section to identify the boundaries of public land within the section, a private landowner may protest the resurvey and, where the protesting landowner points up a serious contradiction between the resurvey and the topographic calls accompanying the original plat, it is proper to remand the case for a fact hearing.

Domenico A. Tussio et al., 30 IBLA 92 (Apr. 29, 1977)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Universal Resources Corp. et al., 31 IBLA 61 (June 23, 1977)

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Bukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

HEARINGS--Continued

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an administrative law judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 178 (Sept. 15, 1977) 84 I.D. 475

An applicant has no right to a hearing in connection with original Federal charges for use and occupancy of a communication site, and in the absence of any specific assertion showing error in the appraisal, the appraisal will be sustained on appeal if it is properly formulated.

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

Although a right-of-way granted under the Act of Jan. 21, 1895, was previously subject to cancellation by the authorized officer for non-use pursuant to 43 CFR 2802.2-3, the Federal Land Policy and Management Act of 1976 provides that suspension or termination of a right-of-way requires an appropriate administrative proceeding pursuant to 5 U.S.C. § 554 (1970), except where the right-of-way provides by its terms that it will terminate in such event.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

A request for a hearing will be denied in the absence of an assertion of fact which, if proved true, would entitle appellant to the relief sought.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978) 85 I.D. 171

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Manhattan Resources, Inc., 34 IBLA 346 (Apr. 26, 1978)

When the United States contests a mining claim for lack of discovery of a valuable mineral deposit, a crucial date for the existence or nonexistence of the discovery is the date of the hearing. Where a mining claimant has shown no justification for her failure to offer evidence of a discovery at the hearing nor shown any likelihood that further evidence could be presented to change the result, a request on appeal for additional time to explore the claim for additional evidence of minerals will be denied, and an administrative law

HEARINGS--Continued

judge's decision declaring the claim null and void will be affirmed.

United States v. Thelma O. Crismon, 34 IBLA 381 (May 2, 1978)

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, a hearing will not be ordered and an appraisal will not be disturbed in the absence of an offer of specific substantial evidence that the determination is incorrect.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970) and 43 U.S.C. § 898 (1970), in which case a hearing need not be ordered to determine whether a railroad's purchaser was an innocent purchaser for value.

Southern Pacific Transportation Co., Donald K. Lee, Charles Siller v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

Where the evidence in an administrative appeal raises countervailing legal presumptions of equal probative worth, a factfinding hearing may be ordered pursuant to 43 CFR 4.415.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

It requires a substantial showing of bias to disqualify a hearing officer in administrative proceedings or to justify a charge that the hearing was unfair.

United States v. Richard R. Kingdon and Edith F. Kingdon, 36 IBLA 11 (June 27, 1978)

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decisionmaker, that the decisionmaker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

Donald H. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

Where there exist factual questions about the location of section and subdivisional corners in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

In challenging the Government resurvey, appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

HEARINGS--Continued

A request for a hearing will be denied when the facts are not in dispute and the determination rests on questions of law.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

While the Department has discretion as to whether to grant a hearing to an offeror whose high bid is rejected for a competitive geothermal lease, a hearing is not in the public interest where offeror has not explained a procedure in which particular facts could be effectively utilized in an alternative formula for computing minimum bids.

Unico Oil Co., 38 IBLA 373 (Dec. 29, 1978)

Where there are conflicting applications for a lot in a Native townsite and the evidence as to who has the better claim is vague and inconclusive, the townsite trustee should submit the matter for a hearing before an administrative law judge. 43 CFR 2565.4(b).

James T. Friedman, 39 IBLA 229 (Feb. 12, 1979)

When on appeal a sufficient showing is made to call into question a determination that land lies within a known geologic structure of a producing oil or gas field, and a hearing is requested, the decision may be set aside and remanded for hearing.

Jack J. Pender, 40 IBLA 26 (Mar. 9, 1979)

Mining claims purportedly located on land not available for such location confer no property right upon the locator, and may be declared null and void ab initio without a hearing under 5 U.S.C. § 554 et seq. (1976).

"Contest." A decision declaring claims located on withdrawn lands to be null and void ab initio is not a "contest" and regulations under 43 CFR 4.451 et seq., relating to mining contests, have no application.

Delmer McLean et al., 40 IBLA 34 (Mar. 15, 1979)

Where production has ceased on an oil and gas lease extended by production, and the record is unclear whether the conditions prescribed by 30 U.S.C. § 226(f) (1976) precluding termination of the lease have occurred, the case will be remanded to the Bureau of Land Management to reconsider with the Geological Survey if the lease has terminated, including a determination whether the lessee began reworking or drilling operations within 60 days after cessation of production and diligently prosecuted such operations before attaining production as asserted by him on appeal. A hearing should be held, if necessary, to resolve disputed facts.

Vern H. Bolinder and Julienne J. Bolinder, 40 IBLA 164 (Apr. 3, 1979)

Where the Geological Survey, in making its decision, has reviewed the same information submitted on appeal to the Board of Land Appeals to show that there was a well capable of producing oil or gas in paying quantities on the date the lease expired, and there are no disputed facts, but only a dispute on the proper application of the law to those facts and legal interpretations, a hearing is not warranted in the case.

American Resources Management Corp., 40 IBLA 195 (Apr. 5, 1979)

HEARINGS--Continued

Where Bureau of Land Management determines an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 et seq.

Frederick Phillips et al., 41 IBLA 169 (June 22, 1979)

Ella S. Sheldon et al., 42 IBLA 276 (Aug. 27, 1979)

Elena Bartman, 43 IBLA 284 (Oct. 17, 1979)

Where the Bureau of Land Management (BLM) determines that an Alaska Native allotment application should be rejected in part because the Native did not use all of the land applied for, the BLM shall initiate a contest proceeding pursuant to 43 CFR 4.451 et seq.

Frank Bulland, 41 IBLA 207 (June 27, 1979) 86 I.D. 342

Where legal conclusions are reached in an appellate decision upon undisputed facts, and there has been no proffer of further facts which could compel different legal conclusions, no useful purpose would be served for a hearing, and a request therefor is properly denied.

Floyd L. Anderson, Sr., 41 IBLA 280 (June 28, 1979)
86 I.D. 345

Peter Panruk, 43 IBLA 69 (Sept. 19, 1979)

Nicky Nickoli, 43 IBLA 296 (Oct. 17, 1979)

A hearing is properly ordered where there exist issues of fact the resolution of which will determine whether an oil and gas lease concluding its primary term was converted from rental status to royalty status. Appellant shall have the burden of proof to establish by a preponderance of the evidence (a) that the Dolezal-Government #1 well was capable of producing oil and gas in paying quantities on Oct. 31, 1978, or (b) that there was a discovery of oil or gas in paying quantities on lease W 15891 on Oct. 31, 1978. If either (or both) of these propositions is established, the subject lease was not subject to automatic termination by law for failure to make timely rental payment.

Coronado Oil Co., 42 IBLA 235 (Aug. 22, 1979)

Where an applicant for a Native allotment alleges for the first time on appeal his use and occupancy of lands prior to their withdrawal, a decision rejecting the Native's application shall be vacated and the case remanded to BLM for its consideration of appellant's new evidence.

Charles L. John, 42 IBLA 260 (Aug. 27, 1979)

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Andy Syndked, 42 IBLA 313 (Aug. 29, 1979)

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give the appropriate weight according to the circumstances surrounding the specific report. However, it is not improper to exclude an assay report where neither the assayer nor the sample-taker testifies concerning its origins, and no other foundation is laid for its introduction.

United States v. John R. Burt et al., 43 IBLA 363 (Oct. 29, 1979)

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.450 - 4.452-9.

Amy Tukrook Nukerigak, 44 IBLA 313 (Dec. 31, 1979)

HOMESTEADS (ORDINARY)
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldiers' Additional Homesteads, Stock-Raising Homesteads--if included in this Index.)

GENERALLY

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior establishes the unit of acreage per entry and publicly announces the availability of water for irrigation.

Richard E. Crill et al., 18 IBLA 428 (Feb. 14, 1975)

An application for homestead entry for land in a national forest must be rejected as the Secretary of the Interior has no authority to permit such a disposition.

Gustavus A. Bremer et ux., 21 IBLA 15 (June 16, 1975)

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Lewis R. Eslick, 24 IBLA 237 (Mar. 24, 1976)

The affidavit of a witness in support of a homestead entryman's final proof will not be considered where it was given in the presence of the entryman, 43 CFR 1823.2-2, as it is the policy of the Department to assure that the testimony of a witness is his own and not that of the entryman.

Estate of Leo Philpott (Deceased), 28 IBLA 60 (Nov. 10, 1976)

HOMESTEADS (ORDINARY)--Continued

GENERALLY--Continued

Where a homestead entryman has cleared and broken ground and allowed a portion of the cleared, plowed acreage to grow up with a species of native wheat grass, such acreage is not "cultivated" within the meaning of 43 CFR 2567.5(b), and the entryman's final proof is properly rejected where it shows on its face that the native grass acreage constituted an indispensable portion of the entryman's attempt at meeting the cultivation requirements of the homestead laws. Since there was not substantial compliance with the cultivation requirements, equitable adjudication cannot be properly invoked.

Clarence Ray Mathis, 29 IBLA 150 (Mar. 4, 1977)

A request to reconsider a 1968 decision by the Department rejecting final proof for a homestead entry and canceling the entry is properly rejected in the absence of a showing of "extraordinary circumstances." In the absence of compelling legal or equitable reasons for reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

The filing of a petition-application is treated as a petition for classification of the land. The mere filing of the application does not vest in the applicant any interest in the land and repeal of the authorizing statute mandates rejection of the application.

Arthur B. Wallace, 30 IBLA 239 (May 31, 1977)

Where the initial actions of a homesteader are inconsistent in that he appears to initiate his claim both by settlement and by application for allowed entry, the nature of his claim will be determined by the type of official form used by him to initiate the claim, and by his actions with regard thereto.

John Anthony Consla v. Robert L. Wetherelt, 30 IBLA 311 (June 6, 1977)

By regulation, final proof of compliance with the homestead laws must be filed within 5 years, failing which the homestead is subject to cancellation, although, in proper cases the time for filing final proof may be extended. However, the statutory life of a homestead claim or entry cannot be extended beyond 5 years, during which time all other requirements must be performed. An extension of the time for filing final proof is not an extension of the time for performing acts of compliance.

Where during the 5-year term of a homestead there is a failure to comply with the residence and cultivation requirements and the requirement of a habitable house, and where subsequent efforts meet only the requirement for a habitable house, there can be no equitable adjudication based on substantial compliance with the homestead law.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

HOMESTEADS (ORDINARY)--Continued

GENERALLY--Continued

A homestead claimant in Alaska may be given credit for residence, cultivation and improvements after the time his homestead application is filed but before allowance of entry where the land was subject to appropriation by him or included in an entry against which he had initiated a contest resulting in cancellation of the entry.

John B. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

Where both an original survey prior to the issuance of a patent and a dependent resurvey after issuance indicate that a homestead patent has issued on land within a national forest, the patent is invalid notwithstanding that the Federal Government may not by means of a second survey affect property rights acquired under an official survey.

Where an entryman has mistakenly applied for and received a patent on one parcel of land which was not the land he actually occupied, he is not entitled to receive a patent on the land actually occupied by virtue of the fact that the statutes of limitation on the issuance and cancellation of patents has run.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

An entryman's final proof is properly rejected when it is defective on its face, with the final proof showing that the applicable cultivation requirements have not been met.

Ronald E. Geiger, 37 IBLA 33 (Sept. 18, 1978)

The Board lacks jurisdiction to adjudicate the validity of homestead entries; the Board, rather, adjudicates the effect of ANCSA on such entries.

Appeal of Carmel J. McIntyre, 4 ANCAB 24 (Nov. 30, 1979) 86 I.D. 663

AMENDMENT

Where a homestead entry has been located on land later included within a withdrawal "subject to valid existing rights," the withdrawal attaches to the land within the homestead upon cancellation of the entry. An amendment of a homestead entry cannot include lands within a canceled adjoining entry to which a withdrawal has attached.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

Prior to the enactment of sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior's authority to correct patents could not be exercised to divest the Government's title to land that was withdrawn or reserved at the time of the mistaken entry. Whether sec. 316 authorizes amendment of a patent in such situations is to be determined in the first instance by the BLM.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

APPLICATIONS

The statement by the BLM State Office that appellant's petition-application is regular on its face is merely a preliminary determination the application will be considered and the process will be set in action to classify the land. The decision to classify land for

HOMESTEADS (ORDINARY)--Continued

APPLICATIONS--Continued

a certain purpose is discretionary with the Secretary of the Interior.

The filing of a petition-application is treated as a petition for classification of the land. The mere filing of the application does not vest in the applicant any interest in the land and repeal of the authorizing statute mandates rejection of the application.

Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

Where the initial actions of a homesteader are inconsistent in that he appears to initiate his claim both by settlement and by application for allowed entry, the nature of his claim will be determined by the type of official form used by him to initiate the claim, and by his actions with regard thereto.

Where a homestead in Alaska is initiated by an application for allowed entry, the filing of the application creates a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Where a homestead in Alaska is initiated by an application to enter, the statutory period for compliance with the requirements of the homestead laws begins to run on the date of allowance of the entry.

John Anthony Consla v. Robert L. Wetherelt, 30 IBLA 311 (June 6, 1977)

A petition-application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

The rejection of a homestead application in Alaska merely because there are prior-filed homestead applications for the same land is improper and premature where no action has been taken on the conflicting applications. If a prior-filed application is allowed, the land comes within an allowed entry of record and a junior application must be rejected thereafter. However, if the prior application is rejected or withdrawn, it no longer bars allowance of a junior application.

John R. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

CLASSIFICATION

The statement by the BLM State Office that appellant's petition-application is regular on its face is merely a preliminary determination the application will be considered and the process will be set in action to classify the land. The decision to classify land for a certain purpose is discretionary with the Secretary of the Interior.

The filing of a petition-application is treated as a petition for classification of the land. The mere filing of the application does not vest in the applicant any interest in the land and repeal of the authorizing statute mandates rejection of the application.

Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

HOMESTEADS (ORDINARY)--Continued

CLASSIFICATION--Continued

A petition-application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

CONTESTS

A charge that the entryman failed to cultivate the required acreage in the second entry year is not sustained where the contestant's evidence consists mainly of a general statement by a few persons concluding that the entryman's mode of cultivation was inadequate. In the face of testimony to the contrary by contestee's witnesses which leaves the evidence in equipoise, contestant has not met his burden of convincingly establishing the fact of the entryman's failure to cultivate in the second entry year.

Thomas E. Kimball v. William Henry Selby, 20 IBLA 23 (Apr. 16, 1975)

A private contest brought against an Alaskan homestead entry charging that the entryman failed to meet the minimum cultivation requirements for the second entry year must be dismissed when it is disclosed that such information was of record in the Bureau of Land Management office at the time the complaint was filed.

Olan B. Christie v. Larry E. O'Gleskee, 23 IBLA 155 (Dec. 23, 1975)

"Final entry." When an amended homestead final proof has been submitted, the term "final entry" in the proviso in sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, *as amended*, 43 U.S.C. § 1165 (1970), refers to the submission, to the proper officials, of the amended final proof and required fees.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, *as amended*, 43 U.S.C. § 1165 (1970), which requires issuance of a patent 2 years after receipt upon final proof for a homestead entry, a contest against an entry should not be dismissed where the complaint was filed within 2 years following the submission of additional affidavits amending the entryman's deficient final proof, despite the fact that the receipt in connection with the deficient proof had been issued more than 2 years before filing of the complaint and the receipt had never been canceled or a new receipt issued.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

A contest complaint is properly dismissed where the only basis for cancellation of the homestead suggested by it is failure to comply with the residence and cultivation requirements of the homestead law, and where the time for compliance with these requirements by the entryman has not yet begun.

John Anthony Consla v. Robert L. Wetherelt, 30 IBLA 311 (June 6, 1977)

HOMESTEADS (ORDINARY)--Continued

CONTESTS--Continued

A private contest decision canceling a disputed homestead entry will, in the absence of a timely and proper appeal, cut off all rights which the contestee may have acquired by his entry, and this result will not be affected by the fact that the contestee failed to appear at the contest hearing and, through his own neglect, failed to receive notice of the decision of the administrative law judge.

Repeal of the homestead laws renders moot the question of whether a private contestant can earn a preference right to enter by procuring the cancellation of a contestee's homestead entry for reasons not shown by Bureau of Land Management (BLM) records.

The question of whether a private contestant has procured the cancellation of a contestee's entry for reasons not shown by records of the BLM, is a factual question which is unrelated to the subject matter jurisdiction of the tribunal and which is entirely ancillary to the prior and primary question of the validity of the contestee's entry.

The fact that BLM is not a party to a private contest proceeding does not affect the force or validity of a decision rejecting a final proof.

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (Jan. 5, 1978)

A private contest complaint which does not set out in clear and concise language a statement of the facts constituting the grounds of contest is properly dismissed.

Eugene A. Whitmill, 34 IBLA 123 (Mar. 2, 1978)

Where the only properly corroborated fact alleged by private contestant related to situs of contestee's residence in 1975 and thereafter, but precomplaint record included assertion by contestee that he lived on homestead in 1972, 1973, and 1974, the contestant has not thereby alleged facts which, if proved, would require cancellation of entry, and contest must be dismissed under 43 CFR 4.450-5(a).

Although in his summary dismissal of private contest against homestead entry administrative law judge discussed issues upon which contestant had failed to submit corroborated allegations of fact along with his complaint, such action by judge did not relieve contestant of his burden of filing corroboration, despite provisions of 43 CFR 4.450-4(b) allowing judge to "raise issues in connection with deciding a contest."

Administrative law judge properly dismissed without a hearing a private homestead entry contest in which complaint failed to allege corroborated facts which, if proved, would provide sufficient basis for cancellation of entry.

Where contestant in private homestead entry contest appeals to Board of Land Appeals and makes certain assignments of error by administrative law judge, but allegations of fact upon which those assignments are based were not corroborated at filing of contest complaint, and issues raised by those assignments were not raised in complaint, such assignments are not material for purposes of appeal to the Board.

Ernest C. Lamb v. Richard B. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

HOMESTEADS (ORDINARY)--Continued

CONTESTS--Continued

A summary dismissal of a private contest against an Alaska homestead becomes a final administrative ruling on that contest when the contestant, instead of appealing the dismissal, files a second contest which must be considered an entirely new action. When a final departmental adjudication has been made, the doctrine of administrative finality, which is the administrative counterpart of the principle of res judicata, generally bars consideration of a new appeal arising from a later proceeding involving the same homestead and the same issue.

A private contest brought against an Alaska homestead charging that the entryman had failed to meet any of the residence or cultivation requirements of the law must be dismissed where the statutory life of the entry has previously expired without the entryman filing final proof and information was already of record in the BLM office that the entryman had done nothing during the life of the entry to perfect the claim. 43 CFR 4.450-1.

Joe C. Amberger, 43 IBLA 178 (Sept. 28, 1979)

CULTIVATION

A homestead entryman is irretrievably in default on his entry where he failed to meet the cultivation requirements in the second, third, and during the growing season of the fourth year of the entry, when he left the land in September of the fourth year for the avowed purpose of making money to complete his improvements.

Arthur Lloyd Zellweger, 19 IBLA 118 (Mar. 5, 1975)

The breaking, planting or seeding, and tillage for a crop which constitute cultivation of the soil of a homestead entry must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

Where it appears that land has been hand seeded and rolled with a log in a similar manner as used on other homestead entries in the area, and where it is not established that such seeding and rolling is not an unreasonable practice for the type of land and weather conditions involved, the entryman's acts may be found to have been calculated to produce profitable results, notwithstanding his efforts failed to produce a useful crop.

A charge that the entryman failed to cultivate the required acreage in the second entry year is not sustained where the contestant's evidence consists mainly of a general statement by a few persons concluding that the entryman's mode of cultivation was inadequate. In the face of testimony to the contrary by contestee's witnesses which leaves the evidence in equipoise, contestant has not met his burden of convincingly establishing the fact of the entryman's failure to cultivate in the second entry year.

Thomas B. Kimball v. William Henry Selby, 20 IBLA 23 (Apr. 16, 1975)

Where a homestead claimant submits a final proof which shows on its face that he has not cultivated the full area required, and the record reflects that he has not qualified for military credit or reduction in the cultivation requirements, action rejecting final proof and canceling the claim may be suspended to permit the entryman to apply to purchase not more than 5 acres under the Homesite Act of May 26, 1934, failing which the proof will be finally rejected and the claim canceled.

James B. Murphey, 20 IBLA 129 (May 5, 1975)

Where a homestead entryman submits the testimony of two witnesses with his final proof and that testimony does not show that the entryman has complied with the cultivation and residence requirements of the law, the final proof is defective on its face; final proof which is defective on its face will be rejected and the homestead entry canceled.

Estate of Lon Philpott (Deceased), 28 IBLA 68 (Nov. 10, 1976)

Cultivation of a homestead entry must include the breaking, planting or seeding and tillage for a crop and be done in such a manner as to be reasonably calculated to produce profitable results.

The acts performed in attempted satisfaction of the cultivation requirements of the homestead law must be done in good faith seeking to establish a profitable agricultural operation on the entry.

An entryman who performs the minimum acts of cultivation, and seeds late in the last growing season and soon thereafter files final proof, who does not visit the entry to see the results of his attempts or pursue any further agricultural activity on the entry, and who does not establish that he had a market or use for the crop he could have grown, and where the results are meager, has not demonstrated that he made a good faith attempt to comply with the agricultural requirements of the homestead act.

United States v. Leonard F. Nelson (Supp. I), 28 IBLA 314 (Jan. 14, 1977)

Where a homestead entryman has cleared and broken ground and allowed a portion of the cleared, plowed acreage to grow up with a species of native wheat grass, such acreage is not "cultivated" within the meaning of 43 CFR 2567.5(b), and the entryman's final proof is properly rejected where it shows on its face that the native grass acreage constituted an indispensable portion of the entryman's attempt at meeting the cultivation requirements of the homestead laws. Since there was not substantial compliance with the cultivation requirements, equitable adjudication cannot be properly invoked.

Clarence Ray Mathis, 29 IBLA 150 (Mar. 4, 1977)

Wherein one year the homestead land is leveled and seed is hand broadcast on the ground in late October after the first frost in Alaska, and the following year seed is simply scattered on the snow by a claimant who asserts he is "not a farmer at all" and does not know whether this is accepted practice, the cultivation requirements of the law have not been substantially met.

A homestead claimant who contracts for the planting of "enough acreage to satisfy the homestead law" in an essentially worthless hay crop in an area of Alaska where there are no livestock, and with no intention to harvest or utilize it even though it successfully matured, has performed only a token compliance which is, prima facie, demonstrative of bad faith. A good faith

devotion of the land to productive and profitable agricultural use is essential to satisfy the purpose and intent of the agricultural land entry laws.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

FINAL PROOF

The breaking, planting or seeding, and tillage for a crop which constitute cultivation of the soil of a homestead entry must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

Where it appears that land has been hand seeded and rolled with a log in a similar manner as used on other homestead entries in the area, and where it is not established that such seeding and rolling is not an unreasonable practice for the type of land and weather conditions involved, the entryman's acts may be found to have been calculated to produce profitable results, notwithstanding his efforts failed to produce a useful crop.

Thomas E. Kimball v. William Henry Selby, 20 IBLA 23 (Apr. 16, 1975)

Where a homestead claimant submits a final proof which shows on its face that he has not cultivated the full area required, and the record reflects that he has not qualified for military credit or reduction in the cultivation requirements, action rejecting final proof and canceling the claim may be suspended to permit the entryman to apply to purchase not more than 5 acres under the Homesite Act of May 26, 1934, failing which the proof will be finally rejected and the claim canceled.

James B. Murphey, 20 IBLA 129 (May 5, 1975)

In proper circumstances, the issuance of an order to show cause why final proof should not be rejected and entry canceled, is within the discretionary authority of the Bureau of Land Management in adjudicating a homestead application.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, *as amended*, 43 U.S.C. § 1165 (1970), an order to show cause why final proof should not be rejected and entry canceled, which order requires the showing of a material fact, is considered a contest or protest.

The showing of "kind of crop planted" and "quantity of crop harvested" are reasonable requirements for final proof submitted for an Alaska homestead.

"Final entry." When an amended homestead final proof has been submitted, the term "final entry" in the proviso in sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, *as amended*, 43 U.S.C. § 1165 (1970), refers to the submission, to the proper officials, of the amended final proof and required fees.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, *as amended*, 43 U.S.C. § 1165 (1970), which requires issuance of a patent 2 years after receipt upon final proof for a homestead entry, a contest against an entry should not be dismissed where the complaint was filed within 2 years following the submission of additional affidavits amending the entryman's deficient final proof, despite the fact that the receipt in connection with the deficient proof had been issued more than 2 years before filing of the complaint and the receipt had never been canceled or a new receipt issued.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

HOMESTEADS (ORDINARY)--Continued

FINAL PROOF--Continued

The affidavit of a witness in support of a homestead entryman's final proof will not be considered where it was given in the presence of the entryman, 43 CFR 1823.2-2, as it is the policy of the Department to assure that the testimony of a witness is his own and not that of the entryman.

Where a homestead entryman submits the testimony of two witnesses with his final proof and that testimony does not show that the entryman has complied with the cultivation and residence requirements of the law, the final proof is defective on its face; final proof which is defective on its face will be rejected and the homestead entry canceled.

Estate of Lon Philpott (Deceased), 28 IBLA 68 (Nov. 10, 1976)

By regulation, final proof of compliance with the homestead laws must be filed within 5 years, failing which the homestead is subject to cancellation, although, in proper cases the time for filing final proof may be extended. However, the statutory life of a homestead claim or entry cannot be extended beyond 5 years, during which time all other requirements must be performed. An extension of the time for filing final proof is not an extension of the time for performing acts of compliance.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

A homestead claimant in Alaska may be given credit for residence, cultivation and improvements after the time his homestead application is filed but before allowance of entry where the land was subject to appropriation by him or included in an entry against which he had initiated a contest resulting in cancellation of the entry.

"Subject to appropriation by him." The provision in 43 CFR 2511.4-2(a) permitting credit for residence and cultivation by a homestead entryman before the date of entry if during that period the land was "subject to appropriation by him" does not refer to land for which there were prior-filed homestead applications which are subsequently withdrawn or rejected. Therefore, until action is taken on prior-filed applications, final proof filed by a junior homestead applicant should not be rejected merely because the land is subject to the prior applications.

The mere fact homestead final proof in Alaska is filed before allowance of the homesteader's application for entry does not preclude consideration of the final proof if entry is allowed.

John E. Dean, 34 IBLA 330 (Apr. 26, 1978)   85 I.D. 81

LANDS SUBJECT TO

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Richard E. Crill et al., 18 IBLA 428 (Feb. 14, 1975)

Lewis M. Balick, 24 IBLA 237 (Mar. 24, 1976)

Dallas C. Qualman et al., 36 IBLA 119 (July 25, 1978)

HOMESTEADS (ORDINARY)--Continued

LANDS SUBJECT TO--Continued

An application for homestead entry for land in a national forest must be rejected as the Secretary of the Interior has no authority to permit such a disposition.

Gustavus A. Fisher et ux., 21 IBLA 15 (June 16, 1975)

The filing of an amended Alaska State Selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Klatt, Allan D. Klatt, 23 IBLA 59 (Dec. 11, 1975)

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Clifford Prisbrey, 24 IBLA 108 (Mar. 1, 1976)

Where a homestead entry has been located on land later included within a withdrawal "subject to valid existing rights," the withdrawal attaches to the land within the homestead upon cancellation of the entry. An amendment of a homestead entry cannot include lands within a canceled adjoining entry to which a withdrawal has attached.

Pekka E. Merikallio, 30 IBLA 157 (May 18, 1977)

A powersite classification effects withdrawal of lands to the full extent described therein as of publication in the *Federal Register*, even if the extent of the land withdrawn by it is not accurately entered subsequently on land-status maps, and, notwithstanding this error, lands classified by it are withdrawn under sec. 24 of the Federal Power Act from settlement under the homestead laws, so that a notice of location settlement claim and final proof concerning these lands is properly rejected.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

The rejection of a homestead application in Alaska merely because there are prior-filed homestead applications for the same land is improper and premature where no action has been taken on the conflicting applications. If a prior-filed application is allowed, the land comes within an allowed entry of record and a junior application must be rejected thereafter. However, if the prior application is rejected or withdrawn, it no longer bars allowance of a junior application.

John E. Dean, 34 IBLA 330 (Apr. 26, 1978)   85 I.D. 81

Where land on which a valid settlement has been made and maintained according to the law under which it was made, was excepted from the effect of the withdrawal or reservation, occupancy of the land prior to reservation or withdrawal is insufficient to show exception where no filing has been made on the prior occupancy and the prior occupancy was not for homestead purposes.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

HOMESTEADS (ORDINARY)--Continued

RESIDENCE

A homestead claimant who fails to establish residence on the land within 1 year after initiating the claim has failed to comply with the law and his entry must be canceled.

Robert A. Rice, Jr., 22 IBLA 291 (Nov. 3, 1975)

Pursuant to 43 CFR 2567.5(a)(1), a homestead entryman in Alaska must establish residence upon the land within 6 months of the date of allowance of the entry or within a maximum period of 12 months, if a 6-month extension of time was requested and granted. These periods do not commence at the time of the filing of the application.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

Where a homestead entryman submits the testimony of two witnesses with his final proof and that testimony does not show that the entryman has complied with the cultivation and residence requirements of the law, the final proof is defective on its face; final proof which is defective on its face will be rejected and the homestead entry canceled.

Estate of Lon Philpott (Deceased), 28 IBLA 68 (Nov. 10, 1976)

To establish residency on a homestead there must be the intent to make the desired public lands the entryman's home, and also the intent to no longer have a home at the former residence; the law permits an entryman to have two residences, but he may have only one home.

An entryman who, at the time he seeks to establish residence on the entry, owns a house which he leases furnished for 6 and 1/2 months and to which he returns a few days after he has completed the required 7 months on the entry did not establish his home on the entry in good faith, and thus has not met the residence requirement of the homestead law.

A homestead entry made with no intention of establishing a permanent bona fide home on the entry, but merely with a view to submitting a showing sufficient to support occupancy for the briefest time permitted under the law must be canceled, notwithstanding the proof offered shows full technical compliance with respect to inhabitancy of the land for the period required by the law.

United States v. Leonard F. Nelson (Supp. I), 28 IBLA 314 (Jan. 14, 1977)

SECOND ENTRY

An application for a second homestead entry under the Act of Sept. 5, 1914, is properly rejected in the absence of sufficient showing that the applicant lost, forfeited, or abandoned the original entry through no fault of his own or because of matters beyond his control.

Arthur Lloyd Zellweger, 19 IBLA 118 (Mar. 5, 1975)

SETTLEMENT

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Richard F. Crill et al., 18 IBLA 428 (Feb. 14, 1975)

Lewis M. Kalick, 24 IBLA 237 (Mar. 24, 1976)

Dallas C. Qualman et al., 36 IBLA 119 (July 25, 1978)

Where the initial actions of a homesteader are inconsistent in that he appears to initiate his claim both by settlement and by application for allowed entry, the nature of his claim will be determined by the type of official form used by him to initiate the claim, and by his actions with regard thereto.

John Anthony Consla v. Robert L. Wetherelt, 30 IBLA 311 (June 6, 1977)

Where a notice of location of settlement claim is filed covering land which is not available for entry, the notice must be rejected and cannot be suspended to await the possible restoration of the land to entry.

A powersite classification effects withdrawal of lands to the full extent described therein as of publication in the Federal Register, even if the extent of the land withdrawn by it is not accurately entered subsequently on land-status maps, and, notwithstanding this error, lands classified by it are withdrawn under sec. 24 of the Federal Power Act from settlement under the homestead laws, so that a notice of location settlement claim and final proof concerning these lands is properly rejected.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

A reservation of geothermal resources must be imposed upon a patent issued for an Indian allotment under the fourth section of the General Allotment Act on land known to be valuable for such geothermal resources, even though the allotment is based upon settlement established prior to any withdrawal of the public domain and antedated the knowledge of the geothermal resources, but the application for patent was made subsequent to an application for withdrawal of the land to protect the geothermal resources.

Heirs of Carrie Bethel, 29 IBLA 210 (Mar. 22, 1977)

With respect to Indian allotments on national forest lands, the Secretary of Agriculture or his delegate is required by statute to determine whether the land is more valuable for agriculture or grazing purposes than for the timber thereon. Once the conclusion that the land is more valuable for agriculture or grazing is reached, it is the function of the Secretary of the Interior and/or his delegate to adjudicate the application including determination of the legal sufficiency of applicant's use and occupancy.

The granting of an Indian allotment in a national forest, assuming that the statutory criteria have been met, is within the discretion of the Secretary of the Interior and is not a mere ministerial duty.

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

GENERALLY--Continued

Viability of an Indian allotment from an economic standpoint is a legitimate consideration in the exercise of the Secretary's discretionary authority over allotments. However, land in an Indian allotment application may be considered together with adjacent land owned by the applicant in determining viability. Past history of use of the land to provide a livelihood is a relevant factor.

Lorinda L. Hulsman, 32 IBLA 280 (Sept. 27, 1977)

Where the Secretary of Agriculture has made a determination pursuant to sec. 31 of the Act of June 25, 1910, 36 Stat. 863, 25 U.S.C. § 337 (1976), that lands within a national forest are of no value for the timber found thereon and are of negligible value for agricultural or grazing purposes, the Secretary of the Interior may reject the allotment where the record shows that the land in question is not a viable economic agricultural unit.

Samuel C. George, 39 IBLA 399 (Mar. 2, 1979)

CLASSIFICATION

In applying the statutory criteria to an Indian allotment application for land in a national forest under the Forest Allotment Act of June 25, 1910, 25 U.S.C. § 337 (1970), the Secretary of the Interior is bound by the determination of the Secretary of Agriculture that the land is more valuable for the timber found thereon than for agricultural or grazing purposes. An application must be rejected where there is such a determination and there is neither confusion regarding the basis of the report nor error apparent on the face of the report.

Merlin W. Tripp, Sr., 21 IBLA 85 (June 27, 1975)

In a decision on a request for reconsideration, the earlier decision holding that an application for an Indian allotment under sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1970), is properly reduced from 160 to 80 acres will be sustained where a Bureau of Land Management detailed report of field examination shows the land to be nonirrigable agricultural in character.

Edgar L. Cerday, 25 IBLA 229 (June 21, 1976)

With respect to Indian allotments on national forest lands, the Secretary of Agriculture or his delegate is required by statute to determine whether the land is more valuable for agriculture or grazing purposes than for the timber thereon. Once the conclusion that the land is more valuable for agriculture or grazing is reached, it is the function of the Secretary of the Interior and/or his delegate to adjudicate the application including determination of the legal sufficiency of applicant's use and occupancy.

Lorinda L. Hulsman, 32 IBLA 280 (Sept. 27, 1977)

In applying the statutory criteria to an Indian allotment application for land in a national forest under the Forest Allotment Act of June 25, 1910, 25 U.S.C. § 337 (1970), the Secretary of the Interior is bound by the determination of the Secretary of Agriculture that the land has no value for agricultural or grazing purposes. An application will be remanded for further report from the Department of Agriculture where there is not a clear determination that the land is or is not more valuable for agriculture or grazing than for its timber.

Samuel C. George, 35 IBLA 19 (May 5, 1978)

LANDS SUBJECT TO

In applying the statutory criteria to an Indian allotment application for land in a national forest under the Forest Allotment Act of June 25, 1910, 25 U.S.C. § 337 (1970), the Secretary of the Interior is bound by the determination of the Secretary of Agriculture that the land is more valuable for the timber found thereon than for agricultural or grazing purposes. An application must be rejected where there is such a determination and there is neither confusion regarding the basis of the report nor error apparent on the face of the report.

Merlin W. Tripp, Sr., 21 IBLA 85 (June 27, 1975)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." Pending final action on the matter, public lands are not open to Indian allotment settlement and disposition following the filing and noting of an application by the Bureau of Land Management for a proposed withdrawal; regulation 43 CFR 2091.2-5(a) provides that the noting of an application for withdrawal on the official plats maintained in the proper land office shall temporarily segregate the subject land from settlement under the public land laws to the extent that the withdrawal applied for, if effected, would prevent such forms of disposal. Following issuance of a public land order withdrawing the subject land, Indian allotment applications previously held in a suspense status are properly rejected.

Thurman Banks et al., 22 IBLA 205 (Oct. 15, 1975)

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 while the grazing lease was still extant, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Herman Haakanson, 23 IBLA 54 (Dec. 4, 1975)

In a decision on a request for reconsideration, the earlier decision holding that an application for an Indian allotment under sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1970), is properly reduced from 160 to 80 acres will be sustained where a Bureau of Land Management detailed report of field examination shows the land to be nonirrigable agricultural in character.

Edgar L. Cerday, 25 IBLA 229 (June 21, 1976)

A reservation of geothermal resources under the Geothermal Steam Act of 1970 may be inserted in a patent issued for an Indian allotment granted under the fourth section of the General Allotment Act.

Heirs of Carrie Bethel, 29 IBLA 210 (Mar. 22, 1977)

LANDS SUBJECT TO--Continued

In applying the statutory criteria to an Indian allotment application for land in a national forest under the Forest Allotment Act of June 25, 1910, 25 U.S.C. § 337 (1970), the Secretary of the Interior is bound by the determination of the Secretary of Agriculture that the land has no value for agricultural or grazing purposes. An application will be remanded for further report from the Department of Agriculture where there is not a clear determination that the land is or is not more valuable for agriculture or grazing than for its timber.

Samuel C. George, 35 IBLA 19 (May 5, 1978)

Where the Secretary of Agriculture has made a determination pursuant to sec. 31 of the Act of June 25, 1910, 36 Stat. 863, 25 U.S.C. § 337 (1976), that lands within a national forest are of no value for the timber found thereon and are of negligible value for agricultural or grazing purposes, the Secretary of the Interior may reject the allotment where the record shows that the land in question is not a viable economic agricultural unit.

Samuel C. George, 39 IBLA 399 (Mar. 2, 1979)

Native occupancy and use commenced at a time when land is withdrawn from settlement, location, sale, or entry provides no basis for a Native allotment. Withdrawal of the land in 1940 by Exec. Order No. 8344, inclusion of the land in a grazing lease and homesite, and the subsequent selection of the land by the State of Alaska in 1966 have effectively kept the land closed to the initiation of rights under the Act of May 17, 1906, at all times during the period from 1940 to Dec. 18, 1971, when the Act was repealed by the Alaska Native Claims Settlement Act.

Although the Department has adhered to the principle of protecting Indian occupancy on public lands, it also has the responsibility of protecting rights of others to public land tenure, including persons who have been granted grazing leases under the Alaska Grazing Act of Mar. 4, 1927, *as amended*, 43 U.S.C. §§ 316, 316a-316o (1976).

Milton R. Pagano, 41 IBLA 214 (June 27, 1979)

Native use and occupancy commenced at a time when land is otherwise appropriated and segregated from such use and occupancy provides no basis for a claim under the Act of May 17, 1906. Inclusion of the subject lands in 1932 in a grazing lease, withdrawal of the lands in 1940, selection of the lands in 1967 by the State of Alaska, and subsequent withdrawals in 1973 pursuant to the Alaska Native Claims Settlement Act have effectively kept the lands closed to the initiation of rights under the Act of May 17, 1906, at all times during the period from 1932 to Dec. 18, 1971, when the Act was repealed by sec. 18 of the Alaska Native Claims Settlement Act.

Although the Department has adhered to the principle of protecting Indian occupancy on public lands, it also has the responsibility of protecting rights of others to public land tenure, including persons who have been granted grazing leases under the Alaska Grazing Act of Mar. 4, 1927, *as amended*, 43 U.S.C. §§ 316, 316a-316c (1976).

Magnel E. Drabek, 41 IBLA 219 (June 27, 1979)

LANDS SUBJECT TO--Continued

Settlement on land in Alaska which is subject to a grazing lease issued under the Alaska Grazing Act of Mar. 4, 1927, 43 U.S.C. §§ 316, 316a-316c (1976), does not create any rights by virtue of such settlement under the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed by 43 U.S.C. § 1617 (1976), since such land is segregated from adverse appropriation at least until the Department takes action to cancel the grazing lease *pro tanto*, but the grazing lease does not preclude the filing of a State selection application which, when filed, segregates the land from all appropriation based upon settlement or location.

Floyd L. Anderson, Sr., 41 IBLA 280 (June 28, 1979)
86 I.D. 345

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Norman Orheim, Billy Boskofsky, Jr. (As Heir of Nicholas Boskofsky), 41 IBLA 338 (July 11, 1979)

Where an applicant for a Native allotment alleges use and occupancy of lands which had previously been withdrawn in accordance with sec. 24, Federal Water Power Act of June 10, 1920, an application is properly denied despite the fact that a public land order designating the area a powersite classification is issued subsequent to the applicant's commencement of use and occupancy. Lands included in an application for powersite development under the Act shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the United States, unless otherwise directed by the Federal Power Commission or by Congress.

Lindberg Alexander, 41 IBLA 382 (July 23, 1979)

Withdrawn lands are not open to appropriation under the Native Allotment Act. Appellant's settlement upon a tract of land withdrawn from entry is a trespass, and such settlement does not provide a basis for any claim to the land.

Publication in the *Federal Register* of PLO No. 3432 withdrawing certain lands in Alaska from all forms of appropriation under the public land laws, except leasing under the mineral leasing laws, gives valid notice of its contents.

Elizabeth J. Martini, 42 IBLA 82 (Aug. 13, 1979)

Lands included in an application for powersite development under the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1976), shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the United States, unless otherwise directed by the Federal Power Commission or by Congress.

Charles L. John, 42 IBLA 260 (Aug. 27, 1979)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

SETTLEMENT

Settlement on land in Alaska which is subject to a grazing lease issued under the Alaska Grazing Act of Mar. 4, 1927, 43 U.S.C. §§ 316, 316a-316o (1976), does not create any rights by virtue of such settlement under the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed by 43 U.S.C. § 1617 (1976), since such land is segregated from adverse appropriation at least until the Department takes action to cancel the grazing lease *pro tanto*, but the grazing lease does not preclude the filing of a State selection application which, when filed, segregates the land from all appropriation based upon settlement or location.

Floyd L. Anderson, Sr., 41 IBLA 280 (June 28, 1979)
86 I.D. 345

INDIAN ECONOMIC ENTERPRISES

BUY INDIAN ACT

The provisions of the Act of June 25, 1910 (36 Stat. 861, 25 U.S.C. § 47 (1970)), commonly referred to as the "Buy Indian" Act, plainly bestow discretionary authority on the Secretary of the Interior with respect to the purchase of products and labor of Indian industry.

Administrative Appeal of Means Construction Co. et al. v. Commissioner of Indian Affairs, 5 IBIA 242 (Nov. 5, 1976)

INDIAN LANDS
(*See also* Indian Probate--if included in this Index.)

GENERALLY

Sec. 8 of the Act of Apr. 23, 1904, 33 Stat. 302, providing for survey and allotment of lands within the Flathead Indian Reservation, excepts from mineral entry those lands classified as "timber land" by a Presidential Commission, and the Department of the Interior has no authority to overturn such classification and declare the "timber lands" more valuable as "mineral lands."

Lands set apart as an Indian reservation cease to be a part of the public domain. A mining claim located on Indian lands not opened to entry is void ab initio.

Unless there is an express provision to the contrary effect, lands contained in an Indian reservation are segregated for the benefit of the Indians, and withdrawn from the operation of the public land laws, including the mining laws.

Montana Copper King Mining Co. et al., 20 IBLA 30 (Apr. 16, 1975)

The Department of the Interior does not have the authority to modify a statute ratifying an agreement with an Indian tribe on the grounds of fraud or coercion in the execution of the agreement.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

INDIAN LANDS--Continued

GENERALLY--Continued

The provision in 43 CFR 3825.1(b) that failure to pay annual rental on or before the anniversary date of a mining claim located in the Papago Indian Reservation "shall be deemed sufficient grounds for invalidating the claim" is directory, not mandatory. Where the mining claimant does not pay rental for 2 years on two claims and is 1-1/2 years late on other claims, and where he has not paid the rental prior to receiving decisions from the Bureau of Land Management holding the claims invalid, the mining claims must be held invalid.

Lewis P. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

The holder of a mining claim located within the Papago Indian Reservation under sec. 3 of the Act of June 18, 1934, 48 Stat. 984 (repealed, Act of May 27, 1955, 69 Stat. 67), is required to make the annual rental payment for the claim in advance (on or before the anniversary date of location of the claim). A decision invalidating a claim will be upheld where proceedings to void the claim are not initiated until several months after the rental due date, there is no evidence the rent was paid for the year, and appellant admits the failure to pay was an oversight.

John A. Cooley, 36 IBLA 245 (Aug. 14, 1978)

The Alaska Native Claims Settlement Act extinguished aboriginal occupancy claims of Alaska Natives; such claims cannot serve as a bar to a State selection, nor preclude the State from challenging Native allotment applications conflicting with its selection.

Under the "functional" standard to determine administrative standing set forth in *Koniag, Inc.* v. *Andrus*, 580 F.2d 601 (D.C. Cir. 1978), *cert. denied*, 99 S. Ct. 733 (1979), the State of Alaska has standing to challenge Native allotment applications conflicting with its selection applications even if the land is within a Native village selection area under the Alaska Native Claims Settlement Act. The State has standing under Departmental regulations to initiate private contests against such conflicting Native allotment applications.

State of Alaska et al., 41 IBLA 315 (July 11, 1979)
86 I.D. 361

The collection of a yearly rental pursuant to the provisions of 43 CFR 3825.1(b) for a mining claim situated within the Papago Indian Reservation in no way presages the existence of a valid mining claim based on the discovery of a valuable mineral deposit.

United States v. J. C. Wilson, 44 IBLA 1 (Nov. 6, 1979)

ALLOTMENTS

Generally

The Quapaw Indians were allotted under the Act of Mar. 2, 1895, 28 Stat. 876, 907. The initial period of restrictions against alienation contained in this Act was extended by subsequent amendments to Mar. 3, 1971.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975)
82 I.D. 640

INDIAN LANDS--Continued

ALLOTMENTS--Continued

Generally--Continued

Where a Native allotment application is filed before the death of an applicant, proof of the applicant's use and occupancy, if otherwise timely, may be filed by the appropriate official of the Bureau of Indian Affairs pursuant to 43 CFR 2561.2(a) after the applicant's death. A decision rejecting the application because the proof was filed after the applicant's death must be set aside where the proof is not inconsistent with the application. Further proceedings must be served upon the heirs, known or unknown, by appropriate service, and also upon conflicting claimants, such as the State of Alaska.

Ernest L. Olson, Jr. (Deceased), 41 IBLA 179 (June 22, 1979)

Assuming, in the light most favorable to appellant, that the allotments at issue were subject to the final proviso of sec. 9 of the Act of Mar. 2, 1889, 25 Stat. 888, 891, we find no language in this or other sections of the Act evidencing an intention on the part of Congress that allotments--to be valid--required approval by the Oglala Sioux Tribe.

Appellant's contention that under sec. 22 of the Act of June 30, 1834, 4 Stat. 729, 733 (25 U.S.C. § 194 (1976)), the burden of proof cannot be assigned to the tribe is without merit. The issue framed by appellant does not align "Indians" against "whites." The primary relief sought by the tribe is the cancellation of trust patents which can only be held by Indians.

The issuance of a trust patent for an Indian allotment carries with it a presumption of proper performance as well as the implied finding of every fact made a prerequisite to the patent's issue.

In addition to contravening rights bestowed by the tribe's own constitution, appellant's position that members of the tribe cannot obtain fee patents to individually owned trust land violates express guarantees contained in the General Allotment Act and the Indian Reorganization Act, as amended.

Administrative Appeal of Oglala Sioux Tribe v. Commissioner of Indian Affairs and Richard Tall (PBD-10542), 7 IBIA 188 (Sept. 5, 1979) 86 I.D. 425

Alienation

Pursuant to the Act of July 28, 1955, 69 Stat. 392, as amended (25 U.S.C. § 608 (1970)), and 25 CFR 121.17 et seq., an Indian owner of trust land who consents to sell her interest to the Yakima Tribe is legally entitled to the fair market value therefor.

The party challenging the terms or conditions of a sale of Indian land bears the burden of proving the violation or misconduct alleged.

The individual Indian seller has not upheld her burden of disproving the validity of the Mar. 1976 appraisal as the basis for sale of her land in Oct. 1976, nor has she demonstrated through the proposed testimony of witnesses or other possible evidence, any necessity for ordering a hearing on this question.

Where the subject appraisal was based on the land's "highest and best use" and 5 of the 80 acres were considered by the BIA appraiser as contributing no value in such a market, the appellant erroneously construed the appraisal as a determination that 5 acres of her land were without value for any purpose.

Under the circumstances of this case, no prejudicial error occurred as a result of the BIA appraiser's failure to estimate the worth, or lack thereof, of an old abandoned structure on appellant's land.

Administrative Appeal of Hazel Hawk Visser v. Area Director, Portland Area Office, Bureau of Indian Affairs, 7 IBIA 22 (Feb. 17, 1978)

Patents

Applications

Application for patent in fee will be denied where applicant is found incapable of properly or adequately managing her own affairs.

Administrative Appeal of Ethel H. Not Afraid v. Area Director, Billings, et al., 3 IBIA 235 (Jan. 31, 1975) 82 I.D. 51

CEDED LANDS

The Mineral Leasing Act of 1920 is not applicable to lands of the Wind River Indian Reservation which were ceded by the Indians to the United States in trust for disposition but were subsequently restored to tribal ownership. Such lands may be leased only under the Act of May 11, 1938, 25 U.S.C. § 396a et seq. (1970).

The Mineral Leasing Act of 1920 is not applicable to the ceded but undisposed of lands of the Wind River Indian Reservation. Such lands may be leased only under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Co., 19 IBLA 285 (Mar. 26, 1975)

The Agreement of Dec. 8, 1893, between the Yuma (now Quechan) Indians and the United States, ratified in sec. 17 of the Act of Aug. 15, 1894, was an absolute, present cession of any and all interests of the Indians to the nonirrigable lands in the Fort Yuma Indian Reservation created by Executive Order of Jan. 9, 1884.

Sec. 25 of the Act of Apr. 21, 1904, which authorized the application of the Reclamation Act of 1902 to the Yuma Indian Reservation, did not repeal by implication sec. 17 of the Act of Aug. 15, 1894, which provided for the cession, reclamation and allotment of the Reservation, and is in no way inconsistent with the 1894 Act.

Assuming that the Act of Aug. 15, 1894, was a conditional rather than an absolute cession by the Yuma (now Quechan) Indians of their rights to the nonirrigable lands in the Fort Yuma Indian Reservation, all material conditions on the part of the United States were met, and the cession has occurred.

The administrative treatment of land as reservation land under the jurisdiction of the Bureau of Indian Affairs for many purposes is not dispositive of the status of the land in the face of clear legislation demonstrating that it was absolutely ceded, even without conflicting administrative treatment of the lands as public domain or under the jurisdiction of the Reclamation Service. The Department has the authority to resolve disputes and correct errors in the status of lands within its jurisdiction.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977) 84 I.D. 1

INDIAN LANDS--Continued

CEDED LANDS--Continued

When interpreting Federal agreements and statutes pertaining to Indian Affairs, one must consider the legislative history, as well as surrounding circumstances and subsequent administrative practices to determine what the parties intended, and in particular, what the Indians understood the agreement to mean. Doubtful expressions are to be resolved in the Indians' favor.

Congressional intent to modify or abrogate Indian property rights must be clear and cannot be lightly inferred.

The Agreement of Dec. 4, 1893, between the Yuma (now Quechan) Indians and the United States, ratified in the Act of Aug. 15, 1894 (28 Stat. 286, 332) provided for a conditional cession of the nonirrigable land of the Fort Yuma Reservation. The conditions which included allotment and sale of surplus irrigable land and the opening of nonirrigable lands to settlement and entry, did not occur during the decade following the agreement and ratifying statute.

Title to Certain Lands Within the Boundaries of the Fort Yuma (now called Quechan) Indian Reservation, M-36908 (Jan. 2, 1979) 86 I.D. 3

CONTRACTS

Formation and Validity

Bids and Awards

Mistakes

Where the Bureau of Indian Affairs knew or should have known of the bidder's mistake, a bidder on Indian lands is entitled to recover deposits where he is guilty of mistake in misreading of specification.

Administrative Appeal of Douglas Stout v. Commissioner, Bureau of Indian Affairs, 5 IBIA 260 (Dec. 3, 1976) 83 I.D. 603

FEE LANDS

A decision by the Bureau of Land Management canceling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

Blue Star, Inc., Atomic Western, Inc., Fremont Energy Corp., Ivor Adair, 41 IBLA 333 (July 11, 1979)

FORESTRY

Timber Sales Contract

Administrative Fees

Determining the reasonableness of administrative fees assessed under authority of 25 CFR 141.18 is a matter requiring the exercise of discretionary authority and as such the issue must be directed to the Assistant Secretary for Indian Affairs for resolution.

The Board of Indian Appeals may not resolve a discretionary matter without clear authority from the Secretary.

INDIAN LANDS--Continued

FORESTRY--Continued

Timber Sales Contract--Continued

Administrative Fees--Continued

Under existing regulations neither the Superintendent nor the Area Director had the authority to require collection of other than a 5 percent fee from appellant in the absence of special instructions from the Secretary.

The Secretary or the Assistant Secretary for Indian Affairs has authority to reduce the fixed fees described at 25 CFR 141.18 regardless of whether the charge is for timber sold under regular supervision.

Administrative Appeal of Helen S. Kirschling v. Bureau of Indian Affairs, 7 IBIA 36 (Mar. 17, 1978)

GRAZING

Generally

The Bureau of Indian Affairs is not required to withdraw allotted land from a range unit designated for grazing in accordance with 25 CFR 151 merely because a majority of the owners in the allotment have requested withdrawal.

Administrative Appeal of Iris Bear Heels v. Aberdeen Area Director, 6 IBIA 253 (Dec. 15, 1977)

Appeals

Generally

A person who has no interest that would be adversely affected by the outcome of an appeal is not an interested party and service of an appeal on such person is not necessary under 25 CFR 2.11(a).

Administrative Appeal of James Rosenberg v. Area Director, Portland Area Office, 6 IBIA 124 (Aug. 1, 1977) 84 I.D. 439

Sales

Generally

Submission of more than one bid on any one unit by any given bidder is considered proper unless prohibited by the sale terms.

Administrative Appeal of James Rosenberg v. Area Director, Portland Area Office, 6 IBIA 124 (Aug. 1, 1977) 84 I.D. 439

Indian Preference

Generally

Privilege of meeting high sealed bids of non-Indians in grazing sales is limited to adult tribal members, Indian corporations and Indian Associations according to preference determined by the governing body and concurred in writing by the Area Director.

Administrative Appeal of Jake Ring et al. v. Area Director, Aberdeen, 6 IBIA 137 (Aug. 10, 1977)

INDIAN LANDS--Continued

IRRIGATION

Sec. 25 of the Act of Apr. 21, 1904 (33 Stat. 189, 224), which authorized the application of the 1902 Reclamation Act to the Fort Yuma and Colorado River Reservations, and which provided for the allotment and sale of surplus irrigable lands on those reservations, was unrelated to and was not intended to effect the conditional cession provided for in the 1893 agreement and the 1894 ratifying statute.

Title to Certain Lands Within the Boundaries of the Fort Yuma (now called Quechan) Indian Reservation, M-36908 (Jan. 2, 1979) 86 I.D. 3

LEASES AND PERMITS

Generally

A lease canceled by the Superintendent of an Indian Agency for nonpayment of rent is not reinstated when rents are subsequently accepted pending an administrative appeal.

Administrative Appeal of Wayne H. Evans v. Aberdeen Area Director et al., 4 IBIA 202 (Nov. 14, 1975)

Except where prohibited by statute or regulations a lease which remains executory in part may be canceled or abandoned by mutual consent.

Cancellation or abandonment of a lease may be implied from acts of the parties in negotiating for a new lease concerning the same property or subject matter.

Upon issuance of a show cause letter by the Bureau of Indian Affairs, and it appearing that the alleged violation can be corrected, the lessee shall be given a reasonable opportunity to cure the breach.

Administrative Appeal of Harold Hansen v. Area Director, Aberdeen Area Office, et al., 5 IBIA 4 (Jan. 20, 1976)

Leases may be granted by the Secretary pursuant to 25 CFR 131.2(a)(4) only where adult owners who qualify under 25 CFR 131.3 are unable to agree upon a lease.

Administrative Appeal of James Morgan, Jr. v. Area Director, Aberdeen Area Office, et al., 5 IBIA 14 (Jan. 22, 1976) 83 I.D. 20

Where an oil and gas lease on Indian allotted lands provides for a term of years and as much longer thereafter as oil and gas is produced in paying quantities, upon failure to achieve production during the primary period the lease terminates by its own terms.

An oil and gas lease on Indian lands will not be extended beyond the primary term by the mere assertion of the lessee, after the lease has expired, that the lease had been committed to a unitized area which contained a producing well. Where the record shows that the lessee did not comply with the terms of the lease or the regulations requiring the lease to affirmatively seek approval of the Secretary of the Interior to officially commit the lease to a producing unit, outside events had no effect on the lease, and the lease expired by its own terms.

A communitization agreement involving an oil and gas lease for Cheyenne-Arapaho allotted lands may properly be approved by the Area Director, BIA, pursuant to 25 CFR 172.24 where that agreement incorporates all the terms and conditions of a State pooling order which joined the lessee with all other holders of mineral interests in the other tracts involved in the unit agreement.

Cotton Petroleum Corp. v. Samedan Oil Corp., 25 IBIA 13 (Feb. 8, 1977)

Oil and gas produced from leases of Fort Peck tribal lands cannot be taxed by the State of Montana.

The taxation proviso contained in 25 U.S.C. § 398 (1970) does not apply to leases entered into under the 1938 Mineral Leasing Act (25 U.S.C. §§ 396a-396f (1970)). States cannot tax the production of oil and gas from such leases.

Tax Status of the Production of Oil and Gas from Leases of Fort Peck Tribal Lands under the 1938 Mineral Leasing Act, M-36896 (Nov. 7, 1977) 84 I.D. 905

Farming and Grazing

The restricted allotment of any Indian may be leased for farming or grazing purposes by the allottee or his heirs, subject to the approval of the superintendent or other officer in charge of the reservation where the land is located, under such rules and regulations as the Secretary of the Interior may prescribe.

Administrative Appeal of W. J. P. Graham and William S. Graham v. Area Director, B.I.A., Billings, and All Other Interested Parties, 4 IBIA 205 (Nov. 19, 1975) 82 I.D. 568

Grazing

Allocation

Generally

A tribal governing body may authorize the allocation of grazing privileges for tribal and tribally controlled Government land to Indian corporations, Indian associations, and adult tribal members.

Administrative Appeal of Sally Ann Pankratz and Aurelia Spencer v. Superintendent, Fort Belknap Agency; Area Director, Billings Area Office; Fort Belknap Community Council; and Arnold Allen, 4 IBIA 231 (Nov. 26, 1975) 82 I.D. 585

Revocation or Cancellation

The Superintendent may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 180 days written notice for allocated Indian use.

Administrative Appeal of Sally Ann Pankratz and Aurelia Spencer v. Superintendent, Fort Belknap Agency; Area Director, Billings Area Office; Fort Belknap Community Council; and Arnold Allen, 4 IBIA 231 (Nov. 26, 1975) 82 I.D. 585

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Long-term Business/Agriculture

Generally

In the absence of any qualifications, the plain and ordinary construction or meaning of the term gross receipts as contained in the lease must be given.

Administrative Appeal of Palm Patencio Co., Inc., et al. v. Winifred Patencio Preckwinkle et al., 5 IBIA 37 (Mar. 2, 1976)

If definition of gross receipts and other pertinent lease provisions governing rental consideration are unambiguous the plain terms must control. Otherwise, resort may be had to rules of construction and relevant parol evidence to assist in ascertaining the intentions of the parties.

Administrative Appeals of Thunderbird Theater Co., Inc., Solon F. and Marian T. Burns, Shell Oil Co. v. Commissioner, Bureau of Indian Affairs, et al., 6 IBIA 240 (Nov. 29, 1977)

Cancellation

A lease may be canceled by the Secretary, at the request of the lessor where lessee has failed to carry out specific provisions of the lease.

Administrative Appeal of Sessions, Inc. (A California Corp.) v. Richard Amado Miguel (Lessor), Lease No. PSL-35, 4 IBIA 84 (July 10, 1975) 82 I.D. 331

Rentals

Acceptance of rentals by a lessor subsequent to default on specific provisions of the lease by the lessee does not constitute waiver of items in default in the absence of showing that lessor voluntarily or intentionally waived the requirements under the lease.

Administrative Appeal of Sessions, Inc. (A California Corp.) v. Richard Amado Miguel (Lessor), Lease No. PSL-35, 4 IBIA 84 (July 10, 1975) 82 I.D. 331

The 20-percent limitation regarding rental adjustments appearing only in the ARBITRATION clause of the subject lease has no application to rental adjustments which may be effected pursuant to the RENTAL ADJUSTMENT clause of the lease and regulations.

Administrative Appeal of Norman R. Byrd v. Commissioner, Bureau of Indian Affairs, 7 IBIA 142 (May 11, 1979)

Waiver

Generally

Acceptance of rentals by a lessor subsequent to default on specific provisions of the lease by the lessee does not constitute waiver of items in default in the absence of showing that lessor voluntarily or intentionally waived the requirements under the lease.

Administrative Appeal of Sessions, Inc. (A California Corp.) v. Richard Amado Miguel (Lessor), Lease No. PSL-35, 4 IBIA 84 (July 10, 1975) 82 I.D. 331

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Oil and Gas

In exercising its discretion to lease or not to lease oil and gas under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970), the Department may reject an oil and gas lease offer filed thereunder, where the minerals are held in trust for the Shoshone and Arapaho Indians and are leasable under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Co., 18 IBLA 326 (Jan. 7, 1975)

Reasonable transportation costs of production from oil and gas leases from the field to the first available market are allocable to the Federal or Indian royalty interest.

Kerr-McGee Corp., 22 IBLA 124 (Sept. 26, 1975)

Where an oil and gas lease on Indian allotted lands provides for a term of years and as much longer thereafter as oil and gas is produced in paying quantities, upon failure to achieve production during the primary period the lease terminates by its own terms.

An oil and gas lease on Indian lands will not be extended beyond the primary term by the mere assertion of the lessee, after the lease has expired, that the lease had been committed to a unitized area which contained a producing well. Where the record shows that the lessee did not comply with the terms of the lease or the regulations requiring the lease to affirmatively seek approval of the Secretary of the Interior to officially commit the lease to a producing unit, outside events had no effect on the lease, and the lease expired by its own terms.

A communitization agreement involving an oil and gas lease for Cheyenne-Arapaho allotted lands may properly be approved by the Area Director, BIA, pursuant to 25 CFR 172.24 where that agreement incorporates all the terms and conditions of a State pooling order which joined the lessee with all other holders of mineral interests in the other tracts involved in the unit agreement.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (Feb. 8, 1977)

Oil and gas produced from leases of Fort Peck tribal lands cannot be taxed by the State of Montana.

Tax Status of the Production of Oil and Gas from Leases of Fort Peck Tribal Lands under the 1938 Mineral Leasing Act, M-36896 (Nov. 7, 1977) 84 I.D. 905

Tribal royalties from leases of Jicarilla Apache tribal lands cannot be taxed by the State of New Mexico.

Tax Status of the Production of Oil and Gas from Jicarilla Apache Tribal Lands Under the 1938 Indian Mineral Leasing Act, M-36896 (Supp.) (Mar. 2, 1979) 86 I.D. 161

Subleases, Assignments, Amendments, Encumbrances

A sublease, assignment, amendment or encumbrance of any lease may be made only with the approval of the

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Subleases, Assignments, Amendments, Encumbrances--Continued

Secretary and the written consent of all parties to such lease.

Administrative Appeal of W. J. B. Graham and William S. Graham v. Area Director, B.I.A., Billings, and All Other Interested Parties, 4 IBIA 205 (Nov. 19, 1975) 82 I.D. 568

Violation

Damages

The measure of damages is governed primarily by applicable provisions of the lease to the extent specified and provided therein.

Administrative Appeal of Paul E. Jackson v. Area Director, Anadarko, et al., 4 IBIA 39 (Apr. 29, 1975) 82 I.D. 191

OIL AND GAS LEASING

Generally

An oil and gas lease offer must be rejected as to lands applied for which are held in trust for Indians and are not available under the Mineral Leasing Act. Even though the minerals in these lands have been reserved to the United States, mineral development is not possible at this time because the language of the exchange act under which the lands were acquired requires further promulgation of special regulations by the Secretary as a condition precedent to such development.

Thomas D. Chace, 31 IBLA 13 (June 17, 1977)

The language of the Treaty of Fort Laramie and the Executive Order of Apr. 12, 1870, when considered with the case law and various utterances made contemporaneously with the Treaty, discloses an intention to include the lands underlying the Missouri River, insofar as it runs through the Fort Berthold reservation, among the lands of the reservation itself.

Impel Energy Corp., 42 IBLA 105 (Aug. 16, 1979)

Allotted Lands

Where an oil and gas lease on Indian allotted lands provides for a term of years and as much longer thereafter as oil and gas is produced in paying quantities, upon failure to achieve production during the primary period the lease terminates by its own terms.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (Feb. 8, 1977)

Tribal Lands

Reasonable transportation costs of production from oil and gas leases from the field to the first available market are allocable to the Federal or Indian royalty interest.

Kerr-McGee Corp., 22 IBLA 124 (Sept. 26, 1975)

INDIAN LANDS--Continued

PATENT IN FEE

Generally

Under regulations in effect before Apr. 24, 1973, issuance of a fee patent to a competent Indian applicant was considered by the Department to be mandatory. On the foregoing date, however, 25 CFR Part 121 was revised to reflect the authority derived from the authorizing Acts and to allow the exercise of discretion in the issuance of fee patents.

Administrative Appeal of Oglala Sioux Tribe v. Commissioner of Indian Affairs and Richard Tall (BBD-10562), 7 IBIA 188 (Sept. 5, 1979) 86 I.D. 425

Jurisdiction

Issuance of a patent in fee on a trust allotment results in the Secretary's loss of jurisdiction and authority thereover.

Administrative Appeal of James P. Bowen v. Superintendent, Northern Cheyenne Agency, et al., 3 IBIA 224 (Jan. 21, 1975) 82 I.D. 19

A decision by the Bureau of Land Management canceling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

Blue Star, Inc., Atomic Western, Inc., Tremont Energy Corp., Ivor Adair, 41 IBLA 333 (July 11, 1979)

RESERVATION BOUNDARY

Where an Indian tribe acquired title to land under treaty, an erroneous survey of a boundary which became the boundary of an adjacent wilderness area, could be administratively corrected and control would be restored to the tribe under 16 U.S.C. § 473 (1970).

Taos Pueblo Tract C, M-36884 (Oct. 28, 1976) 83 I.D. 529

Once boundaries of a reservation are established, neither the boundaries nor title to tracts within them can be altered or abolished without a clear statement of Congressional intent to do so.

Opinion on the Boundaries of and Status of Title to Certain Lands Within the Colville and Spokane Indian Reservations, M-36887 (Feb. 2, 1977) 84 I.D. 72

RIGHTS-OF-WAY

It was not error for the administrative law judge to interpret ambiguous provisions of the subject right-of-way as if they were agreed to in an easement by contract through consideration of the intentions of the parties. If the easement was created by Federal grant, intentions of the parties could still be examined to resolve ambiguous language.

The intention of the parties was that appellant would consummate a lease of tribal tidelands as a condition to receiving the grant of a right-of-way over the tidelands.

INDIAN LANDS--Continued

RIGHTS-OF-WAY--Continued

Appellant was required to complete a lease of tribal tidelands before it could subject them to public use. The foremost condition of the right-of-way grant was that the public not have access to tribal tidelands before a shellfish protection plan could be incorporated in a lease of the tidelands.

There was an unauthorized opening of the right-of-way by appellant before completion of a tidelands lease agreement.

Appellant was required to make improvements on the right-of-way before it could be opened to the public. The Bureau of Indian Affairs was entitled to cancel the right-of-way grant in accordance with 25 CFR 161.20(a) when appellant violated this condition.

Administrative Appeal of Whatcom County Park Board (Appellant) v. Area Director, Portland Area Office, Bureau of Indian Affairs (Respondent), Lummi Indian Tribe (Intervenor), 6 IBIA 196 (Nov. 28, 1977)
84 I.D. 938

SUB-SURFACE ESTATES

An oil and gas lease offer must be rejected as to lands applied for which are held in trust for Indians and are not available under the Mineral Leasing Act. Even though the minerals in these lands have been reserved to the United States, mineral development is not possible at this time because the language of the exchange act under which the lands were acquired requires further promulgation of special regulations by the Secretary as a condition precedent to such development.

Thomas D. Chace, 31 IBLA 13 (June 17, 1977)

TAXATION

The taxation proviso contained in 25 U.S.C. § 398 (1970) does not apply to leases entered into under the 1938 Mineral Leasing Act (25 U.S.C. §§ 396a-396f (1970)). States cannot tax the production of oil and gas from such leases.

Tax Status of the Production of Oil and Gas from Leases of Fort Peck Tribal Lands under the 1938 Mineral Leasing Act, M-36896 (Nov. 7, 1977) 84 I.D. 905

The taxation proviso contained in 25 U.S.C. § 398c (1970) does not apply to leases entered into under the 1938 Leasing Act (25 U.S.C. §§ 396a-396f (1970)). States cannot tax tribal royalties from such leases.

Tax Status of the Production of Oil and Gas from Jicarilla Apache Tribal Lands Under the 1938 Indian Mineral Leasing Act, M-36896 (Supp.) (Mar. 2, 1979)
86 I.D. 181

TRESPASS

Damages

Notice and demand for collection of damages for trespass on Indian lands are prerequisites to filing suit in Federal district court to collect damages for trespass and is not subject to appeal under 25 CFR Part 2.

Administrative Appeal of Dean Hansen v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 5 IBIA 250 (Nov. 16, 1976) 83 I.D. 561

INDIAN LANDS--Continued

TRIBAL RIGHTS IN ALLOTTED LANDS

Absent regulation requiring otherwise the most equitable valuation date would be the date the Tribe elects to purchase the property of a noneligible heir or devisee.

The Board is not bound by the Bureau of Indian Affairs' appraisal, report, and findings contained therein. Instead, the Board will give consideration to the complete record, including the BIA appraisal, report and findings in arriving at its findings and determination.

Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles and Caroline J. Charles (Brendale), 5 IBIA 96 (May 21, 1976) 83 I.D. 209

Absent controlling guidelines in the statute concerning valuation date (fair market value) it is more equitable to charge the Yakima Tribe the fair market value of the property as of the date the Tribe elected to purchase same, i.e., Jan. 25, 1974.

Estate of Tesens (Timens) Vivian Gardafee, 5 IBIA 113 (May 27, 1976) 83 I.D. 216

A statutory option held by the Tribe to take such interests in lands which pass to specific heirs or devisees who are not enrolled members of the Tribe does not vest any rights in said interests until payment by the Tribe of the fair market value as determined by the administrative law judge, after hearing if demanded, plus unpaid interest.

Fair-market value date is considered to be the date of hearing to determine value or if no hearing, the date the judge makes an independent finding and judgment as to the fair market value of the interest to be taken.

Estate of Edward Lewis Pitt, 6 IBIA 156 (Oct. 17, 1977)
84 I.D. 854

The action of the Land Committee of the Yakima Tribe in voting to acquire allotted land at the fair market value as determined by the Bureau of Indian Affairs after an appraisal constituted an offer to purchase and not an acceptance of an offer.

Administrative Appeal of Hazel Hawk Visser v. Area Director, Portland Area Office, Bureau of Indian Affairs, 7 IBIA 22 (Feb. 17, 1978)

The fair market value date is considered to be the date of hearing to determine value.

Interest is due and payable only on the unpaid balance of the fair market value as determined from the date of filing the election to take by the Tribe.

A statutory option held by the Tribe to take interest in land under the Act of Dec. 31, 1970 (84 Stat. 1874, 25 U.S.C. § 607 (1970)), does not vest any right in such interests until payment by the Tribe of the fair market value as determined by the administrative law judge after hearing if demanded, plus interest.

Estate of Joseph Simmons, Sr., 7 IBIA 43 (Mar. 31, 1978)

INDIAN PROBATE

(See also Indian Lands, Indian Tribes--if included in this Index.)

GENERALLY

Where the constitutionality of the Act of Dec. 31, 1970 (25 U.S.C. § 607 (1970), 84 Stat. 1874), is challenged in court, the parties are not precluded from entering into a stipulation for settlement upon which the court may enter a consent judgment rendering a ruling upon the constitutional issue unnecessary.

Estate of Benjamin Harrison Stowby (Deceased Yakima Allottee No. 2455) and Estate of Mary G. Guiney Harrison (Deceased Colville Allottee No. S-925), 3 IBIA 243 (Feb. 4, 1975) 82 I.D. 55

The Department of the Interior does not have the authority to declare a statute unconstitutional as being in violation of the Constitution of the United States.

Estate of Joyce Mary James, 4 IBIA 81 (June 20, 1975)

Indians specifically excluded from the General Allotment Act are precluded from invoking rights extended by the Act or amendment thereto. However, simply because the Quapaws were allotted under a separate act of Congress does not support a conclusion that the heirship provisions of the General Allotment Act cannot be applied to them.

Where no section of the General Allotment Act suggests that the Quapaws were to be excluded from the Act's provisions and where no section of the Quapaw Allotment Act suggests the inapplicability of the General Allotment Act to allotted Quapaw lands, there lies a reasonable basis for jointly interpreting these Acts. The correctness of applying the heirship provisions of the General Allotment Act to the Quapaws is conclusively established because the Quapaw Allotment Act fails to adopt State law.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

The Department of the Interior does not have authority to declare a Federal statute unconstitutional.

Estate of William (Kenoa) Jackson, 6 IBIA 52 (May 4, 1977)

Omitted Indian heirs are entitled to an order showing their relationship to decedent as a matter of protecting their heritage, regardless of the de minimis value of the estate.

Estate of Alexander Joseph Williams, 6 IBIA 132 (Aug. 2, 1977)

ADMINISTRATIVE PROCEDURE

Generally

The administrative law judge's order determining heirs failed to satisfy requirements of the Administrative Procedure Act because of the absence of a statement of "findings and conclusions, and the reasons or basis therefore, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C.A. § 557(c). Under this circumstance, we believe it is

INDIAN PROBATE--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

appropriate to consider appellant's new evidence on appeal and we conclude that such evidence justifies a rehearing on the issue of decedent's marital status prior to Dec. 16, 1953.

Estate of Mitchell Robert Cusearts (Kunski), 6 IBIA 10 (Jan. 27, 1977)

Applicability to Indian Probate

Opportunity to be represented and to be present and cross-examine witnesses in all the law requires as prerequisite of full administrative hearing.

Estate of Minnie Moses Capp, 7 IBIA 266 (Nov. 15, 1979)

The Board of Indian Appeals has authority to reverse findings of fact by an administrative law judge even when not clearly in error. But an administrative law judge will not be reversed when his decision turns upon findings concerning credibility, which in turn are based upon the demeanor of witnesses, and such findings are supported by substantial evidence.

Estate of Edward Lockwood, Jr., 7 IBIA 271 (Nov. 20, 1979)

Official Notice, Record

Official notice of documents and records will not be taken unless they are introduced in evidence or unless an order or stipulation provides to the contrary.

Estate of Peahnor (Mabell) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

ADOPTION (See also CHILDREN, ADOPTED--if included in this Index.)

Generally

An alleged adoption cannot be recognized where it has not been effected under any of the provisions of 25 U.S.C. § 372a (1970).

Estate of William (Kenoa) Jackson, 6 IBIA 52 (May 4, 1977)

APPEAL

Administrative Law Judge as Trier of Facts

An administrative law judge's finding based on that part of the evidence which printed words do not preserve are not ordinarily reviewable by the agency, and the administrative law judge's findings on veracity must not be overturned without very substantial preponderance in testimony as recorded.

Estate of Albin (Alvin) Shenasy, 7 IBIA 70 (July 3, 1978)

INDIAN PROBATE--Continued

APPEAL--Continued

Administrative Law Judge as Trier of Facts--Continued

It has been consistently held that an examiner's (presently administrative law judge) findings based on that part of the evidence which printed words do not preserve are not ordinarily reviewable by the agency, and examiner's findings on veracity must not be overturned without very substantial preponderance in testimony as recorded.

Estate of Fannie Wewrebe Choate, 7 IBIA 171 (July 31, 1979)

The weight and credibility of evidence are matters properly considered by an administrative law judge in the first instance. His findings, when in accord with the preponderance of the substantial and probative evidence adduced, will not be disturbed.

Where there is sufficient evidence to support the finding and testimony is conflicting the determination of witness credibility and the findings of the fact by examiner (now administrative law judge) will not be disturbed because only he had the opportunity to hear and observe the witnesses.

Estate of Roland Lord (Hokeadleah) Botone, 7 IBIA 177 (Aug. 16, 1979)

The weight and credibility of evidence are matters properly considered by an administrative law judge (in this matter, Examiner of Inheritance, Assistant Commissioner, Assistant Secretary of the Interior) in the first instance. His findings, when in accord with the preponderance of the substantial and probative evidence adduced, will not be distributed.

Estate of Guo-la a/k/a Thomas Jones, 7 IBIA 181 (Aug. 28, 1979)

The weight and credibility of evidence are matters properly considered by an administrative law judge in the first instance. His findings, when in accord with the preponderance of the substantial and probative evidence adduced, will not be disturbed.

An administrative law judge may upon his own motion or upon motion of any party in interest schedule a supplemental hearing, if he deems it necessary.

Estate of Mary Chippewa Jackson, 7 IBIA 224 (Oct. 15, 1979)

Extension of Time for Filing

That part of 43 CFR 4.22(f)(1) that precludes extensions of time for filing notices of appeal is jurisdictional from which there is no further administrative appeal or remedy.

Estate of Gei-kaun-mah (Mark), 4 IBIA 129 (Aug. 20, 1975) 82 I.D. 408

Matters Considered on Appeal

Jurisdiction is fundamental to the Board's reviewing authority and it will be examined on appeal even though not raised as an issue previously.

INDIAN PROBATE--Continued

APPEAL--Continued

Matters Considered on Appeal--Continued

Newly discovered evidence is to be presented in support of a petition for a rehearing and will not be considered on an appeal.

Estate of Louis Harvey Chance, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

The Board is not required to consider new evidence first raised on appeal. However, were the Department disposed to ignoring its own regulations governing when new evidence shall be considered, appellants' case still would not be bolstered by an exceptional consideration of evidence now tendered.

Estate of Harold Henry, 5 IBIA 132 (June 18, 1976)

To apply the doctrine that newly discovered evidence shall not be considered on appeal would be unjust to appellant in this case who by virtue of the lack of findings and conclusions in the administrative law judge's original order was unable to perceive the nature of new evidence required to support a valid petition for rehearing.

Estate of Mitchell Robert Quapita (Kunchi), 6 IBIA 10 (Jan. 27, 1977)

Timely Filing

The date the petition is received in the Department of the Interior, rather than the date it was mailed, controls.

Estate of Cato T. Papiabiz (Tomes), 4 IBIA 132 (Aug. 20, 1975)

An appeal not filed within the time specified under Departmental Probate regulations will not be entertained and will be dismissed.

Estate of Edward Alphous Jones, 5 IBIA 138 (June 16, 1976)

Estate of George (Sharkrock) White Antelope, 7 IBIA 166 (Dec. 6, 1978)

Appeals not timely filed under the regulations will be rejected and dismissed.

Estate of Johnny Bill Justis, 7 IBIA 9 (Jan. 30, 1978)

ATTORNEYS AT LAW

Generally

There is no existing requirement that the Secretary of the Interior furnish counsel to parties in Indian probate proceedings conducted in accordance with 43 CFR 4.200 *et seq.* Secondly, the absence of eligible private counsel from an Indian probate hearing, standing alone, does not present sufficient justification for requiring a rehearing in order to receive additional evidence.

Under the circumstances of a contested will which includes a devise of property to a brother long dead, a "self-proved will" does not pass muster by perfunctory questioning of witnesses. Further, although the task of the administrative law judge to develop a complete

INDIAN PROBATE--Continued

ATTORNEYS AT LAW--Continued

Generally--Continued

record may be made more difficult by the absence of counsel for the parties, this important function must still be satisfied.

An administrative law judge is obligated to advise Indian parties of their right to counsel in Indian probate proceedings. When parties voluntarily proceed with a hearing without counsel the administrative law judge shoulders an additional responsibility.

Estate of Peahner (Mabel) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

The administrative law judge shoulders additional responsibility in developing a complete record when parties proceed with a hearing without counsel. In this case the Board is satisfied that the administrative law judge fully utilized the hearings to bring forth all the facts.

Estate of Harold Humpy, 5 IBIA 132 (June 18, 1976)

Administrative law judges bear an additional responsibility when parties voluntarily proceed with probate proceedings without counsel. Here the record shows that the administrative law judge has done all which could reasonably be expected in assisting the aggrieved parties pursue their claims.

Estate of Simpson Mokusille, 5 IBIA 178 (Sept. 24, 1976)

The administrative law judge has an added responsibility to make a complete record when the parties appear without counsel. Appellant was not denied due process by proceeding to conduct contest of decedent's will without assistance of legal counsel.

Estate of George Tsalote, 7 IBIA 261 (Oct. 30, 1979)

Fees

Reasonable fees may be allowed attorney for petitioner in a Departmental reopening where attorney petitions for their allowance and his client agrees that they should be paid, then such fees may be ordered paid from Indian client's recovered distributive share.

Estate of Charley (Jack) Santio, 4 IBIA 244 (Dec. 2, 1975)

Where briefs on appeal indicate a contingency fee arrangement has been made for attorney's fees, provisions of 25 U.S.C. §§ 1, 2, 81, 372, and 373 (1976), and 43 CFR 4.281 require approval of the fee arrangements by the Department.

Estate of San Pierre Kilkakhan (Sam E. Hill), 7 IBIA 240 (Oct. 23, 1979)

Provisions of 43 CFR 4.281 allow the administrative law judge to set a reasonable attorney's fee upon a proper showing by a party in an Indian probate matter. The basis for the fee set must be made to appear of record.

Estate of Frances Agnes Primeaux Stabler Iron Roubedeaux, 7 IBIA 254 (Oct. 25, 1979)

INDIAN PROBATE--Continued

CANADIAN INDIAN (*See also* NATIONAL OF ANOTHER COUNTRY--if included in this Index.)

Where evidence regarding nationality of heirs is conflicting and incomplete, another hearing is required to resolve the question.

Estate of San Pierre Kilkakhan (Sam E. Hill), 7 IBIA 240 (Oct. 23, 1979)

CHILDREN, ADOPTED (*See also* ADOPTION--if included in this Index.)

Indian Custom Adoptions

An Indian custom adoption, alleged to have been made prior to the date of the Act of July 8, 1940 (54 Stat. 746, 25 U.S.C. § 372a (1970)), cannot be recognized as valid unless the adoption is recorded, as provided in the Act, during the lifetime of the adoptive parents.

Estate of Milward Wallace Ward, 4 IBIA 97 (July 16, 1975)
82 I.D. 381

An Indian custom adoption, alleged to have been made prior to the effective date of the Act of July 8, 1940, cannot be recognized as valid unless the adoption is recorded, as provided in the Act, during the lifetime of the adoptive parent.

Before an adoption by Indian custom, made prior to July 8, 1940, shall be recognized as valid, it shall be recorded with the superintendent of the agency.

Estate of Mary Chippewa Jackson, 7 IBIA 224 (Oct. 15, 1979)

CHILDREN, ILLEGITIMATE

Generally

In a case of illegitimacy, it is a reasonable presumption that an unmarried father may refrain from widely proclaiming parenthood.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975)
82 I.D. 640

In a case of illegitimacy, it is a reasonable presumption that a father may refrain from widely proclaiming parenthood. Here, however, the decedent had sworn before an officer of the court that he was the father of the appellee.

Estate of Asa Cottonwood, 7 IBIA 138 (Apr. 10, 1979)

CLAIM AGAINST ESTATE (*See also* DIVORCE--if included in this Index.)

Generally

Appellant fails to refer to any persuasive authority which directs against the submission of a general claim against a deceased Indian's trust estate on someone else's behalf. In the absence of a specific regulation to this effect in 43 CFR 4.250 *et seq.*, regarding claims against estates, we believe it would be inequitable for this Board to nullify an individual Indian's proved claim on the merely technical basis that the claim was filed for and not by the claimant.

In fairness to individual Indian claimants who have had neither the benefit of their own counsel nor guidance from the administrative law judge which could have averted a correctable alleged error in the manner of a

INDIAN PROBATE--Continued

CLAIM AGAINST ESTATE (*See also* DIVORCE--if included in this Index.)--Continued

Generally--Continued

claim presentation, it is no stretch of the Secretary's administrative authority to uphold such a claim on appeal despite a showing of such possible error.

Estate of Wahweraee B. Perquewah, 5 IBIA 169 (Aug. 24, 1976)

Care and Support

A claim for services rendered the decedent has been consistently denied where there is no evidence of any agreement to pay at the time the services were alleged to have been rendered, and no expectation on the part of the claimant that they would be paid for.

Estate of Edith Anderson Pretty Bird Perron, 6 IBIA 41 (Mar. 17, 1977)

A general promise of compensation given by decedent for care and support of decedent's daughter is not invalid or unenforceable merely because specific sums or terms of compensation were not recited in the promise.

Estate of Lucille Mathilda Callous Leg Ireland, 6 IBIA 120 (July 21, 1977)

Claim by devisee under a will for amount for care and support of decedent must be disallowed where not supported by facts and where the claimant had no expectation of payment, and none had been promised by decedent.

Estate of Cleveland Iron Shooter, 7 IBIA 212 (Sept. 12, 1979)

Limitation on Actions

It was within the authority of the administrative law judge to disallow appellant's claim where the evidence shows that a similar claim would be barred under State law as untimely.

Estate of Lawrence Ecoffey, 5 IBIA 85 (Apr. 16, 1976)

Proof of Claim

An unsecured creditor is hard-pressed to overcome objections to his claim if he fails to appear at the probate hearing. This possibility is conveyed to general creditors in the notice of hearing.

Estate of Lawrence Ecoffey, 5 IBIA 85 (Apr. 16, 1976)

Alleged failure of hospital receiving Federal funding under Hill-Burton Act to provide free care as required by the Act does not bar the hospital's claim for care in an Indian probate proceeding where neither decedent nor those claiming to be his heirs had exhausted administrative procedures required by the Act to establish decedent's entitlement to free hospital care.

Estate of Cleveland Iron Shooter, 7 IBIA 212 (Sept. 12, 1979)

INDIAN PROBATE--Continued

CLAIM AGAINST ESTATE (*See also* DIVORCE--if included in this Index.)--Continued

Secured Claim

Generally

If the tribal credit board is correct in its assertion that its claim is secured by a valid Assignment of Trust Income and Power to Lease, legal steps may be taken outside the probate of decedent's estate to seek redress.

Estate of Lawrence Ecoffey, 5 IBIA 85 (Apr. 16, 1976)

Source of Funds for Payment

Hospital bill in an amount larger than cash assets of trust estate must be paid according to regulations governing such payment as established by the Secretary of the Department of the Interior at 43 CFR 4.250 and 4.252.

Estate of Cleveland Iron Shooter, 7 IBIA 212 (Sept. 12, 1979)

CODE OF FEDERAL REGULATIONS (43 CFR Part 4 formerly Title 25 Part 15-Interpretation & Construction)

Generally

Hospital bill in an amount larger than cash assets of trust estate must be paid according to regulations governing such payment as established by the Secretary of the Department of the Interior at 43 CFR 4.250 and 4.252.

Estate of Cleveland Iron Shooter, 7 IBIA 212 (Sept. 12, 1979)

COMPROMISE SETTLEMENTS

Generally

Absent approval by an authorized representative of the Secretary of the Interior a document purporting to constitute a primary devisee's relinquishment of her inherited interest of a deceased Indian's trust estate can be given no effect. Nor can such an instrument be the basis for a compromise settlement pursuant to 43 CFR 4.207 when the primary devisee disavows the alleged agreement before the administrative law judge.

Estate of Charles Red Breath Bear, 6 IBIA 36 (Feb. 14, 1977)
84 I.D. 97

DETERMINATION OF HEIRS BY WAIVER OR AGREEMENT

Generally

Absent approval by an authorized representative of the Secretary of the Interior a document purporting to constitute a primary devisee's relinquishment of her inherited interest of a deceased Indian's trust estate can be given no effect. Nor can such an instrument be the basis for a compromise settlement pursuant to 43 CFR 4.207 when the primary devisee disavows the alleged agreement before the administrative law judge.

Estate of Charles Red Breath Bear, 6 IBIA 36 (Feb. 14, 1977)
84 I.D. 97

INDIAN PROBATE--Continued

DETERMINATION OF HEIRS BY WAIVER OR AGREEMENT--Continued

Generally--Continued

Where prior determination of heirship by agreement is questioned and it appears an agreed heir may not have been entitled to take, the circumstances of the case require the estate be reopened.

Estate of San Pierre Kilbakhan (Sam E. Hill), 7 IBIA 240 (Oct. 23, 1979)

DIVORCE

Generally

The issue of divorce in this case is not controlled by the laws of the State of Washington. The evidence establishes that the separation between the decedent and appellant commenced in 1958, 5 years before the Act of Aug. 15, 1953, 67 Stat. 589 (Public Law 280), was invoked by Washington in its assumption of civil jurisdiction over Indians.

Estate of John Ignace, 5 IBIA 50 (Mar. 19, 1976)

Indian Custom

Generally

Assuming that a resolution adopted by the Business Committee of the Kalispel Tribe on May 8, 1975, which disavows the validity of Indian-custom divorces between Kalispel Indians married by the Catholic Church represents a formally approved ordinance or by-law of the Tribe, it cannot be given the retroactive effect of invalidating previous divorces which were consummated in accordance with recognized Indian custom.

Since it is well established that an Indian-custom divorce dissolves a ceremonial marriage as well as an Indian-custom marriage, the relevant fact in this case is whether the custom of the tribe permits divorce by a permanent separation of the parties. The church custom of particular members of the tribe, whether Catholic or some other religious order, has no bearing unless it can be shown that the tribe adopted specific laws or customs of the church as its own.

Estate of John Ignace, 5 IBIA 50 (Mar. 19, 1976)

A divorce in accordance with Indian custom may be accomplished unilaterally by either of the parties to a marriage. The fact of a separation, plus an intention on the part of at least one of the parties that the separation shall be permanent, established by competent evidence is sufficient to terminate a marriage.

An Indian custom divorce dissolves a ceremonial marriage as well as an Indian custom marriage.

Estate of Henry Frank Racine, 7 IBIA 1 (Jan. 10, 1978)

In order to accomplish an Indian custom divorce by either of the parties to the marriage, it is necessary to establish by convincing evidence that a separation occurred plus the intent on the part of at least one of the parties that the separation was permanent.

Estate of Matthew Cook, 7 IBIA 62 (May 5, 1978)

INDIAN PROBATE--Continued

DIVORCE--Continued

Indian Custom--Continued

Generally--Continued

A divorce in accordance with Indian or tribal custom has long been recognized by the Congress, the courts, and the Department.

The courts have recognized Indian-custom divorces so long as the Indians continue in tribal relations.

In recognizing the validity of Indian-custom divorces, no distinction is made in the kind of marriage which such divorce dissolves so long as the parties contracting the marriage and effecting the divorce are Indian wards of the Government and living in tribal relations.

A divorce by Indian custom may be accomplished unilaterally by either of the parties to the marriage.

The validity of Indian-custom divorce depends on whether the parties were living in tribal relations and whether it was an accepted and recognized custom of the tribe involved.

Estate of Harold Emery, 7 IBIA 118 (Mar. 29, 1979)
86 I.D. 213

To establish an Indian custom divorce, it must be shown the parties were living in "tribal relations" and both the custom relied upon and specific conduct in conformity to custom must also appear. The evidence is insufficient to show Indian custom divorce where there is no evidence that Indian custom divorce was practiced by the tribe to which the marriage partners belonged, and where the conduct of the partners indicated no such practice was intended.

Estate of Frances Agnes Primeaux Stabler Iron Bordeaux, 7 IBIA 254 (Oct. 25, 1979)

DOWER

Generally

Dower may be properly denied a widow disinherited by will since there is no constitutional right to it and the State law providing dower is inoperative upon Indian Trust lands generally.

Estate of Louis Baptist, 5 IBIA 69 (Mar. 8, 1976)

Dower does not fall to the widow as an heir of her husband, but by virtue of her marital right and without regard to the law relating to the rights of heirs.

Estate of Mary Chippewa Jackson, 7 IBIA 220 (Oct. 15, 1979)

EVIDENCE

Generally

The general rule that an administrative law judge's finding of testamentary capacity rendered after consideration of conflicting testimony will not be disturbed on appeal is not an unqualified rule. The judge's finding must be supported by substantial evidence and the evidence relied upon must be competent.

Estate of Peahney (Mabell) (Mable) Mahseet, 5 IBIA 23 (Feb. 23, 1976)

INDIAN PROBATE--Continued

EVIDENCE--Continued

Generally--Continued

In order for an administrative law judge's finding to be upheld or sustained, the finding must be supported by a preponderance of the evidence.

Estate of Alvin Hudson. 5 IBIA 174 (Sept. 2, 1976)

Department rules of evidence permit consideration of affidavits or other evidence not ordinarily admissible under the generally accepted rules of evidence. When a crucial witness who stands to gain nothing from the outcome of an estate is prevented from personally appearing at a hearing for reasons of health, her sworn testimony by way of affidavit should be given due consideration. Here, such an affidavit was also bolstered by other probative evidence.

Estate of Alexander Joseph Williams. 6 IBIA 132 (Aug. 2, 1977)

Where a stipulation is used to establish material facts tending to prove nationality, and where nationality of heirs is a material issue in the probate proceedings, the administrative law judge must, pursuant to 43 CFR 4.232(c), determine that all parties and their attorneys understand the stipulation and its effect, and that all consent to the use of the stipulation as evidence to prove the agreed facts.

Where the record fails to establish the consent of all the parties to a stipulation of fact, the parties may be relieved from the stipulation in the interests of justice.

A stipulation is not binding upon the parties where the stipulation offered to establish facts concerning nationality contains an erroneous conclusion of law.

Estate of San Pierre Kilbakhan (Sam E. Hill). 7 IBIA 240 (Oct. 23, 1979)

The burden of proof as to testamentary incapacity in Indian Probate proceedings is on those contesting the will.

Estate of Winnie Moves Camp. 7 IBIA 266 (Nov. 15, 1979)

Conflicting Testimony

An administrative law judge's findings based on that part of the evidence which printed words do not preserve, such as demeanor and conduct of witnesses, are not ordinarily reviewable. This case however turns on interpretation of documentary evidence and affidavits which this panel is equally qualified to evaluate on appeal.

Estate of Alexander Joseph Williams. 6 IBIA 132 (Aug. 2, 1977)

Where there is sufficient evidence to support the findings and the testimony is conflicting, the determination of witness credibility and the findings of fact of the Examiner (now administrative law judge) will not be disturbed.

Estate of Mary Chippewa Jackson. 7 IBIA 224 (Oct. 15, 1979)

INDIAN PROBATE--Continued

EVIDENCE--Continued

Hearsay Evidence

Alleged declarations of the decedent were properly considered in this case under an exception to the hearsay evidence rule. In addition, Departmental regulations bestow broad authority upon the administrative law judge to consider evidence "not ordinarily admissible under the generally accepted rules of evidence." 43 CFR 4.232(b).

Estate of Harold Emery. 5 IBIA 132 (June 16, 1976)

It has long been recognized that though hearsay evidence lacks certain guarantees of trustworthiness such as amenability to cross-examination, it may yet be relevant and have probative value. At any rate, we do not think the hearsay rule is applicable to administrative proceedings so long as the evidence upon which an order is ultimately based is both substantial and has probative value.

The requirement that the administrative findings accord with the substantial evidence does not forbid administrative utilization of probative hearsay in making such findings.

Estate of Gus-la a/k/a Thomas Jones. 7 IBIA 181 (Aug. 28, 1979)

Newly Discovered Evidence

Newly discovered evidence is to be presented in support of a petition for a rehearing and will not be considered on an appeal.

Estate of Louis Harvey Chapoose. 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

There is no existing requirement that the Secretary of the Interior furnish counsel to parties in Indian probate proceedings conducted in accordance with 43 CFR 4.200 *et seq*. Secondly, the absence of eligible private counsel from an Indian probate hearing, standing alone, does not present sufficient justification for requiring a rehearing in order to receive additional evidence.

Estate of Peahnee (Mabel) (Mable) Mahseet. 5 IBIA 27 (Feb. 23, 1976)

The Board is not required to consider new evidence first raised on appeal. However, were the Department disposed to ignoring its own regulations governing when new evidence shall be considered, appellants' case still would not be bolstered by an exceptional consideration of evidence now tendered.

Estate of Harold Emery. 5 IBIA 132 (June 16, 1976)

To apply the doctrine that newly discovered evidence shall not be considered on appeal would be unjust to appellant in this case who by virtue of the lack of findings and conclusions in the administrative law judge's original order was unable to perceive the nature of new evidence required to support a valid petition for rehearing.

The administrative law judge's order determining heirs failed to satisfy requirements of the Administrative

INDIAN PROBATE--Continued

EVIDENCE--Continued

Newly Discovered Evidence--Continued

Procedure Act because of the absence of a statement of "findings and conclusions, and the reasons or basis therefore, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C.A. § 557(c). Under this circumstance, we believe it is appropriate to consider appellant's new evidence on appeal and we conclude that such evidence justifies a rehearing on the issue of decedent's marital status prior to Dec. 16, 1953.

Estate of Mitchell Robert Cusempts (Russell), 6 IBIA 10 (Jan. 27, 1977)

Newly discovered evidence may be presented in support of the petition for rehearing but the Board is not required to consider it on appeal.

Estate of Hank Cluette, 6 IBIA 47 (Apr. 1, 1977)

Newly discovered evidence which is the same in nature as that previously considered does not present for consideration any new facts or evidence relative to petitioner's paternity and is merely cumulative of evidence already presented.

Estate of Goo-la a/k/a Thomas Jones, 7 IBIA 181 (Aug. 28, 1979)

Presumptions

Although the marriage provisions of a law and order code may be interpreted as recognizing as valid only marriages accomplished by licensing and ceremony, there is a strong public policy favoring marriage which advises that a marraige should be presumed valid unless disproved. This presumption has been extended to marriage by Indian custom.

Estate of Johnnie Holmes, 4 IBIA 175 (Oct. 31, 1975)
82 I.D. 531

In a case of illegitimacy, it is a reasonable presumption that an unmarried father may refrain from widely proclaiming parenthood.

Estate of Louis Harvey Quaray, 4 IBIA 263 (Dec. 23, 1975)
82 I.D. 640

In a case of illegitimacy, it is a reasonable presumption that a father may refrain from widely proclaiming parenthood. Here, however, the decedent had sworn before an officer of the court that he was the father of the appellee.

Estate of Asa Cottonwood, 7 IBIA 138 (Apr. 10, 1979)

Statutory presumption favoring legitimacy of children born within 10 months of divorce may be overcome by strong contrary evidence. Where husband of appellee's mother stated that he separated from appellee's mother several years before the birth of appellee and that another man was the father of appellee, and his statement was supported by other evidence and the circumstances of the case, the presumption was overcome.

Where petitioner at hearing reopening estate failed to produce new evidence to show original order distributing estate 22 years earlier was in error, the evidence was insufficient to permit modification of the original order. Testimony which is merely cumulative of prior evidence or which elaborates prior evidence is not sufficient to overturn the first order.

INDIAN PROBATE--Continued

EVIDENCE--Continued

Presumptions--Continued

Estate of Tie Tieyah, 7 IBIA 234 (Oct. 17, 1979)

Proof of Marriage

Although the marriage provisions of a law and order code may be interpreted as recognizing as valid only marriages accomplished by licensing and ceremony, there is a strong public policy favoring marriage which advises that a marriage should be presumed valid unless disproved. This presumption has been extended to marriage by Indian custom.

Estate of Johnnie Holmes, 4 IBIA 175 (Oct. 31, 1975)
82 I.D. 531

Requests for Discovery

The Department's regulations concerning the rights of parties to submit discovery request, 43 CFR 4.220 *et seq.*, were designed to facilitate the achievement of a full and complete hearing. The regulations do not provide that an administrative law judge should reopen discovery after a hearing to assist aggrieved parties in a search for new evidence. However, where a hearing de novo has been found to be required, it is appropriate to reopen discovery for all parties up to the time that a new hearing is scheduled.

Estate of Peahnee (Mabel) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

HALF BLOOD

Generally

State statutes of descent and distribution as construed and interpreted by the highest court of the State involved will be considered by the Department as controlling in trust heirship proceedings.

Estate of Hubert Franklin Cook, 5 IBIA 42 (Mar. 4, 1976)
83 I.D. 75

HEARING (*See also* ADMINISTRATIVE PROCEDURE, REHEARING--if included in this Index.)

Generally

Although Indian probate proceedings need not be open, public hearings, parties in interest cannot be excluded therefrom.

Estate of Rena Marie Edge, 7 IBIA 53 (Apr. 25, 1978)

Full and Complete

A full and complete hearing is had on proof of a will when all parties are afforded an opportunity to present evidence and to cross-examine witnesses.

Estate of Biensteppie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975)
82 I.D. 169
(*See also* 7 IBIA 53, 85 I.D. 617 (1978).)

INDIAN PROBATE--Continued

HEARING (See also ADMINISTRATIVE PROCEDURE, REHEARING--if included in this Index.)--Continued

Full and Complete--Continued

The administrative law judge shoulders additional responsibility in developing a complete record when parties proceed with a hearing without counsel. In this case the Board is satisfied that the administrative law judge fully utilized the hearings to bring forth all the facts.

Estate of Harold Emery, 5 IBIA 132 (June 18, 1976)

The administrative law judge has an added responsibility to make a complete record when the parties appear without counsel. Appellant was not denied due process by proceeding to conduct contest of decedent's will without assistance of legal counsel.

Estate of George Tsalote, 7 IBIA 261 (Oct. 30, 1979)

When a party to an Indian probate proceeding appears without an attorney, the administrative law judge has a duty not to be a mere umpire, but to see that all relevant facts are developed.

Where a party to an Indian probate proceeding was not represented by counsel and was obviously unprepared for proper presentation of testimony and ignorant of significance of the facts, the administrative law judge had the duty to see that all relevant facts and circumstances, both favorable and unfavorable to the parties, were brought out.

Estate of Joe (Jose) Elvino Juancho, 7 IBIA 294 (Dec. 4, 1979)

Notice

Agency Superintendents are required to furnish all wills in their custody to the administrative law judge upon the maker's death, not only the latest will, since a decedent's purported last will and testament shall not be deemed valid "unless and until it shall have been approved by the Secretary of the Interior." 25 U.S.C. § 373 (1970). Accordingly, the term "each party in interest" to whom specific notice of hearing is required by 43 CFR 4.211(b), should include all devisees of all wills of a decedent which are in the Superintendent's custody at decedent's death, as well as decedent's heirs at law.

Estate of Fannie Newrobe Choate, 6 IBIA 144 (Sept. 9, 1977)

HEARING EXAMINER (See also ADMINISTRATIVE LAW JUDGE--if included in this Index.)

Authority

In administrative hearings, the hearing examiner (now administrative law judge) has wide latitude as to all phases of the conduct of the hearing, including the manner in which the hearing will proceed.

Estate of Mary Chippewa Jackson, 7 IBIA 224 (Oct. 15, 1979)

INDIAN PROBATE--Continued

HOMESTEAD RIGHT

Generally

The Department of the Interior has recognized homestead rights in those cases where such rights have been found necessary and purposeful in the distribution of intestate estates under State law.

Estate of Ellen Phillips, 7 IBIA 100 (Dec. 6, 1978) 85 I.D. 438

INDIAN REORGANIZATION ACT of June 18, 1934 (WHEELER-HOWARD ACT) (25 U.S.C. § 464 et seq.)

Generally

The Indian Reorganization Act, generally, recognizes two classes of persons who may take testator's lands by devise, that is, any member of the tribe having jurisdiction over such lands and legal heirs of the testator.

Estate of Lucinda Shelton Joe, 5 IBIA 50 (Feb. 4, 1976)

Estate of Davey Cleveland, 5 IBIA 72 (Apr. 15, 1976) 83 I.D. 170

Estate of Phoebe Shanta Wilson, 6 IBIA 75 (May 12, 1977) 84 I.D. 187

The Act recognizes two classes of persons who may take testator's lands by devise, that is, any member of the Tribe having jurisdiction over such lands and legal heirs of the testator or testatrix.

Estate of William (Kenoal) Jackson, 6 IBIA 52 (May 4, 1977)

Estate of Dorothy Sheldon, 7 IBIA 11 (Feb. 7, 1978) 85 I.D. 31

Construction of Section 4

The words "or any heirs of such member" found in sec. 4 (25 U.S.C. § 464 (1970)) were early concluded by the Solicitor to mean those who would, in absence of the will, have been entitled to share in the estate.

Estate of Davey Cleveland, 5 IBIA 72 (Apr. 15, 1976) 83 I.D. 170

"Any heir of such member" as used in sec. 464 means those who would, in the absence of a will, have been entitled to share in the estate.

Estate of William (Kenoal) Jackson, 6 IBIA 52 (May 4, 1977)

Estate of Dorothy Sheldon, 7 IBIA 11 (Feb. 7, 1978) 85 I.D. 31

Sec. 4 of Indian Reorganization Act of 1934 (25 U.S.C. § 464 (1976)) is not unconstitutionally discriminatory against named devisee of decedent's will where the Act operates to achieve a recognized aim of Indian legislation.

The reorganization of the Rosebud Sioux Tribe under a constitution and bylaws and a charter, pursuant to the Indian Reorganization Act of 1934, is a reasonable application of the Act and conforms to standards of reasonableness required in such cases. The self-determination, by the Tribe, of its own membership, *INDIAN PROBATE*--Continued

INDIAN REORGANIZATION ACT of June 18, 1934 (WHEELER-HOWARD ACT) (25 U.S.C. § 464 *et seq.*) --Continued

Construction of Section 4--Continued

was in furtherance of the Congressional purpose expressed by the 1934 Act, and was properly approved by the Department concerned.

So long as a scheme for testamentary disposition established by law and regulation conforms to some generally accepted purpose for disposition and organization of Indian trust property it will not be disturbed by the courts.

Estate of Cleveland Iron Shooter, 7 IBIA 212 (Sept. 12, 1979)

Nonapplicability

Certain provisions of the Indian Reorganization Act, including the section which dictates who may take testator's land by devise, do not apply to certain named Indian tribes in Oklahoma, including the Kiowa, Comanche, and Apache tribes.

Estate of Phoebe Shanta Wilson, 6 IBIA 75 (May 12, 1977) 84 I.D. 187

INHERITING (*See also* CHILDREN ADOPTED, CHILDREN ILLEGITIMATE--if included in this Index.)

Non-Indian

The United States has no interest to protect in trust lands inherited by a non-Indian, therefore not obligated to provide services or protection to such a person.

Administrative Appeal of James P. Bowen v. Superintendent, Northern Cheyenne Agency, et al., 3 IBIA 224 (Jan. 21, 1975) 82 I.D. 19

JUDICIAL REVIEW

Generally

Where the constitutionality of the Act of Dec. 31, 1970 (25 U.S.C. § 607 (1970), 84 Stat. 1874), is challenged in court, the parties are not precluded from entering into a stipulation for settlement upon which the court may enter a consent judgment rendering a ruling upon the constitutional issue unnecessary.

Estate of Benjamin Harrison Stowby (Deceased Yakima Allottee No. 2455) and Estate of Mary G. Guiney Harrison (Deceased Colville Allottee No. S-925), 3 IBIA 243 (Feb. 4, 1975) 82 I.D. 55

MARRIAGE

Common Law

To enter into a valid common-law marriage there has to be an actual and mutual agreement to enter into marital relationship, permanent and exclusive of all others, between capable persons in law making such contract, consummated by their cohabitation as man and wife or their mutual assumption openly of the marital duties and obligations.

Estate of Guo-la a/k/a Thomas Jones, 7 IBIA 181 (Aug. 28, 1979)

INDIAN PROBATE--Continued

MARRIAGE--Continued

Common Law--Continued

The evidence was insufficient to establish a common-law marriage where the parties did not hold themselves out to be married, and where one of the parties refused to publicly and openly acknowledge marriage to the other.

Estate of Frances Acres Primeaux Stabler Iron Bourdeaux, 7 IBIA 254 (Oct. 25, 1979)

Common-law marriage is not established where one claiming to be the common-law wife of decedent testifies she cannot recall the time the alleged marriage occurred, and where her claim is not supported by a preponderance of other credible evidence, showing public assumption of the marriage relationship.

Estate of Edward Lockwood, Jr., 7 IBIA 271 (Nov. 20, 1979)

Common Law and Indian Custom Distinguished

Proof at hearing tended to show Indian marriage customs were no longer practiced by the tribe concerned, and that the parties looked only to applicable State laws to regulate their domestic affairs. Indian custom marriage is not synonymous with common-law marriage, but requires proof of Indian marriage customs and conformity in practice to those customs by persons living in "tribal relations."

Estate of Frances Acres Primeaux Stabler Iron Bourdeaux, 7 IBIA 254 (Oct. 25, 1979)

Indian Custom

Generally

In the absence of controlling Federal legislation or formal tribal action, marriages of Indians living in tribal relation may be contracted and dissolved in accordance with Indian custom.

Estate of Henry Frank Racine, 7 IBIA 1 (Jan. 10, 1978)

A marriage contract between members of an Indian tribe in accordance with the customs of such tribe, where the tribal relations and government existed at the time of such marriage, and there is no Federal statute rendering the tribal customs invalid, will be recognized and upheld by the courts of this State (Oklahoma) as a regular and valid marriage for all purposes. Such marriages are not to be treated as common-law marriages, but as legal marriages, according to the custom of the tribe.

Estate of Guo-la a/k/a Thomas Jones, 7 IBIA 181 (Aug. 28, 1979)

Proof of Marriage

Where a law and order code contains no express provision nullifying an Indian custom marriage and where State law affirmatively recognizes such marriage, an uncontested determination of heirship handed down two decades ago which is consistent with State law respecting valid marriages, ought not be disturbed.

Estate of Johnnie Holmes, 4 IBIA 175 (Oct. 31, 1975) 82 I.D. 531

INDIAN PROBATE--Continued

MARRIAGE--Continued

Proof of Marriage--Continued

As between two alleged common law marriages, the law favors the most recent in time over a relationship between two who formerly were married.

Estate of Phillip Tooisgah, 4 IBIA 189 (Nov. 13, 1975)
82 I.D. 541

Proof of a marriage must be established by clear and convincing evidence by the one alleging such a marriage.

Estate of Matthew Cook, 7 IBIA 62 (May 5, 1978)

NOTICE OF HEARING

Generally

It is incumbent upon one claiming lack of notice of a hearing by the Interior Department to determine heirs of a deceased allottee to make a showing of such lack.

Estate of Tenie Teanie Lean Jack Wagon Hill Reyes, 4 IBIA 156 (Oct. 17, 1975) 82 I.D. 522

PLEADING (*See also* APPEAL, PETITION FOR REHEARING--if included in this Index.)

Extension of Time

A timely request for an extension of time was submitted to the appropriate office on Oct. 15, 1976, as a result of the personal visit by appellant's representative to the Agency Superintendent that day, during which time Bureau assistance was provided in drafting such request.

Where an extension request was sent to the wrong office for filing on account of incorrect advice from Department personnel who are responsible for knowing right procedures, the Department is estopped from denying such request on grounds that it was not filed at the proper place.

Estate of James Andrews White, a/k/a James P. Andrews, 6 IBIA 79 (May 24, 1977) 84 I.D. 241

RECONSIDERATION (*See also* APPEAL: RECONSIDERATION--if included in this Index.)

Generally

Indian probate regulations do not contain any provisions for reconsideration of a matter which has been finally determined by the Secretary of the Interior, yet he has the inherent power to reopen and review administrative determinations when some new factors such as newly discovered evidence or fraud are involved.

A request for reconsideration of the action of the Department in approving a will which is based upon an allegation of undue influence, or fraud in its procurement, will be denied where no evidence is furnished in support of the allegation.

Estate of Ruth Wahcotaty (Williams or Daukei) (Caddo Allottee No. 19), 3 IBIA 270 (Mar. 7, 1975)

INDIAN PROBATE--Continued

RECONSIDERATION (*See also* APPEAL: RECONSIDERATION--if included in this Index.)--Continued

Generally--Continued

Indian probate regulations do not contain any provisions for reconsideration of a matter which has been finally determined by the Secretary of the Interior, yet he has the inherent power to reopen and review administrative determinations when some new factors such as newly discovered evidence or fraud are involved.

Estate of San Pierre Kilkakhan (Sam E. Bill), 5 IBIA 12 (Jan. 21, 1976)

Estate of Peter Feather Earring Cleveland, 6 IBIA 118 (July 15, 1977)

REHEARING

Generally

An order denying a rehearing is proper when the petition for rehearing alleging newly discovered evidence fails to state any other grounds which would require a rehearing and, accordingly, an appeal from the denial will be dismissed.

Estate of Milward Wallace Ward, 4 IBIA 97 (July 18, 1975) 82 I.D. 341

Newly discovered evidence is to be presented in support of a petition for a rehearing and will not be considered on an appeal.

Estate of Louis Harvey Quardy, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

Petition for rehearing based upon newly discovered evidence shall be accompanied by affidavits of witnesses stating fully what the new testimony is to be. It shall also state justifiable reasons for the failure to discover and present that evidence tendered as new at the hearing held prior to the issuance of the original decision and order.

Estate of Louis Baptist, 5 IBIA 48 (Mar. 8, 1976)

The Board is not required to consider new evidence first raised on appeal. However, were the Department disposed to ignoring its own regulations governing when new evidence shall be considered, appellants' case still would not be bolstered by an exceptional consideration of evidence now tendered.

Estate of Harold Hungry, 5 IBIA 132 (June 18, 1976)

To apply the doctrine that newly discovered evidence shall not be considered on appeal would be unjust to appellant in this case who by virtue of the lack of findings and conclusions in the administrative law judge's original order was unable to perceive the nature of new evidence required to support a valid petition for rehearing.

The administrative law judge's order determining heirs failed to satisfy requirements of the Administrative Procedure Act because of the absence of a statement of "findings and conclusions, and the reasons or basis therefore, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C.A. § 557(c). Under this circumstance, we believe it is

INDIAN PROBATE--Continued

REHEARING--Continued

Generally--Continued

appropriate to consider appellant's new evidence on appeal and we conclude that such evidence justifies a rehearing on the issue of decedent's marital status prior to Dec. 16, 1953.

Estate of Mitchell Robert Quaempts (Kuneki), 6 IBIA 10 (Jan. 27, 1977)

A petition for rehearing which is based upon newly discovered evidence will be denied where it is not supported by justifiable reasons for failure to discover and present that evidence, rendered as new, at the hearing held prior to the issuance of the decision.

A petition for rehearing which is based upon newly discovered evidence will be denied where it is not accompanied by affidavits of witnesses stating fully what the new testimony is to be.

Estate of Adeline Andrews White, 6 IBIA 94 (June 1, 1977)

But for certain errors committed by the Superintendent's office, appellant would have perfected a proper request for rehearing. In the interest of justice, the extenuating circumstances in this case compel a finding that appellant filed a petition for rehearing which, not having been rejected, was acceptable.

Estate of Fannie Newrobe Choate, 6 IBIA 144 (Sept. 9, 1977)

A rehearing will be granted where a party has been denied a full opportunity to be heard.

Estate of Matthew Cook, 7 IBIA 62 (May 5, 1978)

Petition to rehear (directed to order approving will) is deficient where supported by two affidavits of expected new testimony which do not tend to contradict any of the findings of fact upon which the disputed order is based. Where one of the affidavits is from a witness who previously testified and the other statement is not relevant to the execution of the contested will and merely repeats other testimony given at the hearing, there is no factual basis offered upon which a rehearing can be ordered.

Estate of George Tsalote, 7 IBIA 261 (Oct. 30, 1979)

Pleading, Timely Filing

A petition for rehearing filed with an Examiner of Inheritance was properly denied by the Examiner where the petition was not filed within the period prescribed by the applicable regulations.

Where a petition for rehearing was not filed in the appropriate office of the Department of the Interior until the 61st day after entry of the original order, the Hearing Examiner lacked authority to extend the time for filing thereof and had no jurisdiction to determine the substantive issues raised in the petition on their merits.

Estate of Andrew Jackson Marsh, 4 IBIA 106 (July 29, 1975)

INDIAN PROBATE--Continued

REHEARING--Continued

Pleading, Timely Filing--Continued

The administrative law judge did not commit error in denying a rehearing to parties who failed to file a timely request for rehearing, even though the petitions were filed only 1 day late.

Administrative law judges bear an additional responsibility when parties voluntarily proceed with probate proceedings without counsel. Here the record shows that the administrative law judge has done all which could reasonably be expected in assisting the aggrieved parties pursue their claims.

Estate of Simpson Nokusille, 5 IBIA 178 (Sept. 24, 1976)

In computing the time for filing a petition for rehearing, where the last day of the 60-day period so computed falls on a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, it is not to be included.

Estate of Adeline Andrews White, 6 IBIA 94 (June 1, 1977)

A petition for rehearing mailed on the 60th day but not received in the Department of the Interior on or before the 60th day has not been timely filed.

Estate of Roger Rogue Tosee, 7 IBIA 7 (Jan. 13, 1978)

REOPENING

Generally

Although the Superintendent of an Indian agency has no interest in the outcome, he is a proper official of the Bureau of Indian Affairs to file a petition for reopening, under the authority of 43 CFR 4.242.

Estate of John Mahkuk, 3 IBIA 291 (Mar. 20, 1975)

Estate of Rebecca (Wahbmame) Pigeon or Rebecca White Pigeon or Ahn Wahn Ke, 4 IBIA 168 (Oct. 30, 1975)

A petition for the reopening of Indian heirship proceedings must be submitted within the period of time prescribed in the Departmental regulations.

Estate of Rose Old Bear Wilson, 4 IBIA 62 (June 2, 1975)

A petition for the reopening of an Indian heirship proceeding filed 12 years after the Department had determined the heirs of the Indian decedent will be denied as untimely.

A request for a reopening filed years after the expiration of the period allowed will be denied even where the request for reopening is made by one who was not given an opportunity to be heard and who would clearly be entitled to the relief sought if his petition had been timely made.

Estate of Ke-i-ze or Julian Sandoval, 4 IBIA 115 (Aug. 18, 1975)
82 I.D. 402

INDIAN PROBATE--Continued

REOPENING--Continued

Generally--Continued

In the absence of a showing that a manifest injustice is possible if a case closed for more than 3 years is not reopened, a petition for reopening will not be allowed.

When the evidence before the examiner was uncontradicted as to the factual determination of marriage, and a request for reopening exceeds by 22 years an uncontested determination of heirship, the usual reluctance to avoid disturbance of a factfinder's decision takes on greater emphasis.

Even if petitioners were entitled to their requested relief, which is unsupported by the record, an untimely petition can be denied -- even for a petitioner who was not given an opportunity to be heard in the original proceeding.

Estate of Johnnie Holmes, 4 IBIA 175 (Oct. 31, 1975)
82 I.D. 531

The Secretary of the Interior has inherent power to reopen and review administrative determinations purporting to dispose finally of Departmental proceedings when some factor, such as newly discovered evidence or fraud, is brought to his attention.

Estate of San Pierre Kilkakhan (Sam E. Hill), 4 IBIA 242 (Dec. 2, 1975)

The decision to reopen this estate is supported by the fact that the allegations made in the petition to reopen are not contradicted by other evidence appearing in the record and because the allegations can easily be proved by an examination of available witnesses and reliable documentary evidence.

Omission of an heir is a type of injustice which Departmental regulations permitting reopening were designed to correct.

Estate of Opie Samuel Bordeaux, Sr., 5 IBIA 24 (Feb. 10, 1976)

While requests for reopening estates closed for more than 3 years face rigid requirements under Departmental regulations, exceptional cases arise in which such petitions should be granted.

Generally, three elements must be satisfied to justify reopening an estate which has been closed a long time. First, it must appear that a manifest injustice will likely prevail if the petition to reopen is denied. Second, it should be demonstrated by compelling proof that the delay in requesting relief was not occasioned by the lack of diligence on the part of the petitioning parties. Third, there should exist a possibility for correction of the error.

Estate of David Marksman, 5 IBIA 56 (Mar. 29, 1976)

In the Matter of the Estates of Morgan Black and Mary Grant Black, 5 IBIA 219 (Oct. 28, 1976)

Estate of Peter Feather Earring Cleveland, 6 IBIA 44 (Mar. 30, 1977)

INDIAN PROBATE--Continued

REOPENING--Continued

Generally--Continued

Under the former provisions of 25 CFR 15.18 (now 43 CFR 4.242) reopenings are limited to those persons who had no notice of the original proceedings and were not on the reservation, thus, one in attendance at the original hearing or who had notice has no standing to file a petition to reopen.

Estate of Russell Harold Robb, 5 IBIA 92 (May 10, 1976)

Requests for reopening estates closed more than 3 years face rigid requirements under Departmental regulations and will be granted only in exceptional cases.

Estate of Bert Dog Trail, 5 IBIA 122 (June 8, 1976)

Pursuant to 43 CFR 4.242(h), the Board is not required to reopen an estate closed for more than 3 years unless a probable manifest injustice can be shown.

Estate of Mary Soldierwolf, 5 IBIA 146 (July 13, 1976)

The Board has frequently held that petitions to reopen closed estates require compelling proof that delays in requesting relief have not been occasioned by lack of diligence on the part of petitioning parties.

Where continued effect has been given to a natural disposition of property for over 53 years, the reopening of an estate based on alleged failures of a conditional devisee who is no longer alive to defend his inherited interest would risk greater possible injustices than such reopening could hope to prevent.

Estate of Annie Bear, 5 IBIA 149 (July 21, 1976)

The Superintendent of an Indian agency is a proper official of the Bureau of Indian Affairs to file a petition for reopening under the authority of 43 CFR 4.242, although he has no interest in the outcome of such petition.

An Indian will may be presented for probate even though the estate of the decedent has been distributed as intestate property.

It would be unconscionable for the Secretary of the Interior to fail to give effect to a Departmentally approved will of a deceased Indian which was misfiled by the Agency, unless it can be demonstrated by way of a hearing that the provisions of the will should not be followed.

Estate of Joan (Joanna) Horsechief, 5 IBIA 162 (Sept. 29, 1976)
83 I.D. 362

Under the provisions of 43 CFR 4.242 reopenings are limited to those persons who had no notice of the original proceedings and were not on the reservation, thus, one in attendance at the original hearing or who had actual notice has no standing to file a petition to reopen.

Estate of Ella Ashbough Randall Genereaux, 5 IBIA 248 (Nov. 10, 1976)

INDIAN PROBATE--Continued

REOPENING--Continued

Generally--Continued

Where no cogent reasons are alleged and the petition for reopening is submitted after the statutory period for filing, a reopening will not be allowed.

Estate of Throws First, 6 IBIA 28 (Feb. 4, 1977)
84 I.D. 253

It is permissible to reopen an estate on grounds that such action will possibly lead to petitioners' enrollment in the tribe and therefore correction of a manifest injustice.

It is incumbent on the Department to redistribute interests in trust land in the course of reopening estates when such redistribution is possible as failure to do so would be in violation of the Secretary's trust responsibility to heirs of allotted land.

Estate of Tennyson B. Saupitty, 6 IBIA 140 (Sept. 2, 1977)

In order to justify reopening of an estate that has been closed in excess of the 3-year limitation found in 43 CFR 4.242(h) three elements must generally be satisfied. First, it must appear that a manifest injustice will likely prevail if a petition for reopening is denied. Secondly, it must be demonstrated that the delay in requesting relief was not occasioned by the lack of diligence on the part of the petitioner. Thirdly, there must exist a possibility for correction of the manifest injustice.

Estate of Leonard (Raymond) Cooper, 7 IBIA 5 (Jan. 11, 1978)

Upon a showing of probable error in prior order, a reopening pursuant to 43 CFR 206 and 4.242(a) is required. Where nationality of heirs was found to be relevant to the final order of distribution it was error to rely upon an agreed statement which was in conflict with evidence previously admitted to establish nationality.

Estate of Sam Pierre Kilkakhan (Sam E. Hill), 7 IBIA 240 (Oct. 23, 1979)

Standing to Petition for Reopening

The petitioner, grandsons of the testatrix who are not heirs at law, cannot be considered to be persons with "an interest in the estate" which is the recognized standard governing who may seek reopening.

Estate of Mary Soldierwolf, 5 IBIA 146 (July 13, 1976)

Waiver of Time Limitation

A petition to reopen filed more than 3 years after the final determination of heirs will be granted when there is compelling proof that the delay was not occasioned by the lack of diligence on the part of the petitioning party.

Estate of Francis or Frank DeMarrias (Deceased Sisseton-Wahpeton Sioux Allottee No. SW-381-757), 3 IBIA 218 (Jan. 3, 1975)

INDIAN PROBATE--Continued

REOPENING--Continued

Waiver of Time Limitation--Continued

To avoid perpetuating a manifest injustice, a petition to reopen filed more than 3 years after the final determination of the heirs will be granted where compelling proof is shown that the delay was not occasioned by the lack of diligence on the part of the petitioning party.

Estate of Mollie Kinsman Pomona (Deceased Unallotted Hopi Indian), 3 IBIA 232 (Jan. 31, 1975)

Estate of Charley (Jack) Santio, 4 IBIA 244 (Dec. 2, 1975)

It is in the public interest to require Indian Probate proceedings be concluded within some reasonable time in order that property rights of heirs and devisees in Indian trust allotments be stabilized.

Estate of Virginia Kemp, Penn, Lyon, Webster, Woodhull, Stabler (Osage Unallotted), 3 IBIA 256 (Feb. 6, 1975)

Estate of Rose Old Bear Wilson, 4 IBIA 62 (June 2, 1975)

Estate of Ke-i-ze or Julian Sandoval, 4 IBIA 115 (Aug. 18, 1975)
82 I.D. 40

An administrative law judge is without power to reopen a case after the passage of 3 years from the date the judge enters the order, but the Secretary is not bound by the limitations of 43 CFR 4.242 and he has authority at any time to review on proper grounds.

Estate of John Mahkuk, 3 IBIA 291 (Mar. 20, 1975)

Estate of Rebecca (Wahbsese) Pigeon or Rebecca White Pigeon or Ahn Wahn Ke, 4 IBIA 168 (Oct. 30, 1975)

Petition to reopen filed more than 3 years after the final determination of heirs will not be granted unless there is compelling proof that the delay was not occasioned by lack of diligence on the part of the petitioning party.

It is in the public interest to require Indian Probate proceedings be concluded within some reasonable time in order that the property rights of heirs and devisees of trust allotments be stabilized.

Estate of Everett Morah, 4 IBIA 25 (Apr. 18, 1975)

The Secretary is not bound by the limitations of 43 CFR 4.242 and he may at any time review and reopen estates on proper grounds.

Estate of Henry Max Brouillette, 4 IBIA 48 (May 2, 1975)

An administrative law judge is without power to reopen a case after the passage of 3 years from the date the judge enters the order, but the Secretary is not bound by the limitations of 43 CFR 4.242 and he may waive the time limitations when some factor, such as newly discovered evidence or fraud is brought to his attention.

Estate of Annie Shandreau Graveen, 4 IBIA 226 (Nov. 21, 1975)

INDIAN PROBATE--Continued

REOPENING--Continued

Waiver of Time Limitation--Continued

Where probate was not undertaken until 10 years after decedent's death and the petitioner did not learn of the probate hearing until another 3 years later, the Board is not inclined to deny the petition to reopen for untimeliness.

Estate of Opie Samuel Bordeaux, Sr., 5 IBIA 24 (Feb. 10, 1976)

An estate which has been closed for 13 years may be reopened under extraordinary circumstances to add an omitted heir to the original determination of heirs, notwithstanding the estate is no longer intact, so as to protect the omitted heir if additional property of the decedent is later discovered and to provide a consistent heirship record.

Estate of Oscar Bubuna Deloria, 5 IBIA 34 (Feb. 26, 1976)

A petition to reopen on the grounds of lack of notice, filed more than 3 years after the entry of the order determining heirs, will not be granted unless there is compelling proof that the delay was not occasioned by the petitioner's lack of diligence.

Estate of Enoch Abraham, 5 IBIA 89 (Apr. 22, 1976)

Estate of Russell Harold Robb, 5 IBIA 92 (May 10, 1976)

SECRETARY'S AUTHORITY

Generally

The Act of June 25, 1910 (36 Stat. 855), 25 U.S.C. § 372 (1970), gives the Secretary of the Interior statutory authority to determine heirship whether an estate is a trust allotment or a restricted allotment.

The Act of June 25, 1910, confers jurisdiction upon the Secretary to determine heirs beyond a proceeding involving the original allottee. The Secretary's responsibility under the Act is to determine heirship of all Indians who die intestate possessed of trust or restricted property and such responsibility does not terminate until the trusteeship or period of restriction expires.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975)
82 I.D. 640

The Department of the Interior does not have authority to declare a Federal statute unconstitutional.

Estate of William (Konoal Jackson, 6 IBIA 52 (May 4, 1977)

Proceedings for the determination of a deceased Indian's heirs in a case over which the Department had no jurisdiction must be dismissed.

Estate of Gladys Marie Bellmard (Randall, Preston, Harris) Wilson, 7 IBIA 111 (Dec. 29, 1978)
86 I.D. 1

INDIAN PROBATE--Continued

SECRETARY'S AUTHORITY--Continued

Generally--Continued

A proceeding for the determination of the heirs of a deceased Indian instituted in a case over which the Department has no jurisdiction must be dismissed.

Estate of William E. Hicks, 7 IBIA 115 (Feb. 14, 1979)

Jurisdiction of the Courts

The Secretary is bound by the order of a court only as to those issues and as to those individuals before the court.

Where issues are decided by the Secretary which do not become the subject of litigation, the Secretary's decision is final as to those issues not litigated.

Estate of John J. Akers, 3 IBIA 300 (Mar. 26, 1975)
82 I.D. 108

STATE LAW

Generally

Where no section of the General Allotment Act suggests that the Quapaws were to be excluded from the Act's provisions and where no section of the Quapaw Allotment Act suggests the inapplicability of the General Allotment Act to allotted Quapaw lands, there lies a reasonable basis for jointly interpreting these Acts. The correctness of applying the heirship provisions of the General Allotment Act to the Quapaws is conclusively established because the Quapaw Allotment Act fails to adopt State law.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975)
82 I.D. 640

Applicability to Indian Probate, Intestate Estates

Generally

The Department is not foreclosed from considering as evidence in an heirship determination an affidavit of paternity which was not executed in accordance with State law.

Estate of Terrance Wayne White Bear, 7 IBIA 80 (July 27, 1978)

Under sec. 5 of the General Allotment Act, 25 U.S.C. § 348 (1976), the Department is required to apply the law of the State in which the allotment is located in determining the heirs of the deceased allottee.

Estate of Ellen Phillips, 7 IBIA 100 (Dec. 6, 1978)
85 I.D. 438

Applicability to Indian Probate, Testate

Compliance with State laws setting forth requirements for the execution of wills is not required in the execution of Indian wills disposing of trust or restricted property.

Estate of Hissetennie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975)
82 I.D. 169
(See also 2 IBIA 53, 80 I.D. 617 (1974).)

INDIAN PROBATE--Continued

STATE LAW--Continued

Applicability to Indian Probate, Testate--Continued

The Secretary of the Interior is not bound by State law in passing on the validity of wills of Indians disposing of trust property except where otherwise provided by Congress.

Estate of Hank Cluette, 6 IBIA 47 (Apr. 1, 1977)

TRIBAL COURTS

Generally

Decrees of Tribal courts regarding domestic relations of Indians have generally been recognized by the Department of the Interior, State courts, and Federal courts.

Estate of Clark Joseph Robinson, 7 IBIA 74 (July 26, 1978)
85 I.D. 294

TRUST PROPERTY

Generally

Judgments entered against allottees of restricted land are voidable.

Despite strict laws prohibiting the alienation and encumbrance of restricted land, the Secretary has authority to approve an agreement made by an allottee for the disposition of oil income from restricted property.

Estate of Phillip Tooisgah, 4 IBIA 189 (Nov. 13, 1975)
82 I.D. 541

The Act of June 25, 1910 (36 Stat. 855), 25 U.S.C. § 372 (1970), gives the Secretary of the Interior statutory authority to determine heirship whether an estate is a trust allotment or a restricted allotment.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975)
82 I.D. 640

Where trust patents for allotments for lands were issued in conformity with the General Allotment Act and contained usual provision that the United States would hold lands subject to statutory provisions and restrictions for a period of years, in trust for the sole use and benefit of Indians, and lands were chiefly valuable for their timber, the restraint upon alienation, effected by terms of trust patents, extended to timber and proceeds derived therefrom as well as to lands.

Estate of Elizabeth C. Jensen McMaster, 5 IBIA 61 (Apr. 6, 1976)
83 I.D. 145

In the event that the court approved agreement signed by decedent constituted a judgment against trust property, it is null and void absent approval by the Secretary of the Interior.

Estate of Asa Cottonwood, 7 IBIA 138 (Apr. 10, 1979)

INDIAN PROBATE--Continued

WILLS (*See also* INHERITING--if included in this Index.)

Generally

There is no statute or regulation that would disqualify a non-Indian, as such, as devisee of real property located on the Kiowa-Comanche-Apache Indian Reservation in Oklahoma.

Estate of Vincent Victorio Natalish, Jr., 5 IBIA 1 (Jan. 19, 1976)

Under the circumstances of a contested will which includes a devise of property to a brother long dead, a "self-proved will" does not pass muster by perfunctory questioning of witnesses. Further, although the task of the administrative law judge to develop a complete record may be made more difficult by the absence of counsel for the parties, this important function must still be satisfied.

Estate of Peahbor (Mabel) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

It is not a valid basis for overturning an Indian's will that certain relatives were not included in a devise of property.

Estate of Mary Soldierwolf, 5 IBIA 146 (July 13, 1976)

An Indian will may be presented for probate even though the estate of the decedent has been distributed as intestate property.

Estate of Joan (Joanna) Horsechief, 5 IBIA 182 (Sept. 29, 1976)
83 I.D. 362

There is a strong presumption that one who takes the time to write a will does not intend to die intestate.

Estate of Dorothy Sheldon, 7 IBIA 11 (Feb. 7, 1978)
85 I.D. 31

Under the circumstances of this case, appellant's paternity is not an issue cognizable by the Department in probating her mother's will. In accordance with sec. 8(b) of the Administrative Procedure Act findings should be limited to issues necessary to the disposition of a case.

Estate of Vera Marie Edge, 7 IBIA 53 (Apr. 25, 1978)

Where contested will contains devise which recites that devisee is "caring for me in my old age," the will is not, under the circumstances described at the hearing, conditioned upon continued residence by decedent with devisee of will.

Estate of George Tsalote, 7 IBIA 261 (Oct. 30, 1979)

Approval of Will

A copy of a will can be admitted to probate only if proper execution of the original can be proved.

For the Secretary to withhold approval of testator's will in this case, which omits his illegitimate child and sole heir at law, would be tantamount to applying a "just and equitable" standard in passing on an Indian's

INDIAN PROBATE--Continued

WILLS (*See also* INHERITING--if included in this Index.) --Continued

Approval of Will--Continued

will, which is the precise error in Departmental judgment previously condemned by the Supreme Court.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

Where the scrivener was not in the reasonable vicinity of the place of hearing, departmental procedures do not require that he be produced in a will contest where testamentary capacity is proved by other evidence.

Estate of Hank Cluette, 6 IBIA 47 (Apr. 1, 1977)

Children, Disinheritance of

For the Secretary to withhold approval of testator's will in this case, which omits his illegitimate child and sole heir at law, would be tantamount to applying a "just and equitable" standard in passing on an Indian's will, which is the precise error in Departmental judgment previously condemned by the Supreme Court.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

Construction of

It is incumbent upon the administrative law judge under existing regulations in testate cases to construe the provisions of a will.

Estate of Herman Coando, 5 IBIA 140 (June 22, 1976)
83 I.D. 229

The Board realizes that the Department's Oct. 26, 1927, order approving will construes the devise to John Sherman to be conditional upon his taking care of testatrix's son, petitioner in this case, but, based on the scant record developed in the original probate proceeding, it is not beyond reason that this construction was erroneous.

Estate of Annie Bear, 5 IBIA 149 (July 21, 1976)

In construing a will, the court is faced with the situation as it existed when the will was drawn and must consider all surrounding circumstances, the objects sought to be obtained and endeavor to determine what was in the testator's mind when he made the requests, and the court must not make a new will for testator or testatrix or warp his language in order to obtain a result which the court might feel to be right.

It is well established that, in construing a will the courts will seek for and give effect to the intent, scheme, or plan of the testator, if it be lawful.

The intent must be gathered when possible from the words of the will, construed in their natural and obvious sense.

Estate of Dorothy Sheldon, 7 IBIA 11 (Feb. 7, 1978)
85 I.D. 31

INDIAN PROBATE--Continued

WILLS (*See also* INHERITING--if included in this Index.) --Continued

Contest

Provisions of 25 CFR 4.233(c) requiring testimony of attesting witnesses to contested will to be taken at hearing on probate of will are mandatory when witnesses are available.

Estate of Joseph Caddo a.k.a. James Joseph Caddo and Jim Butler, 7 IBIA 286 (Nov. 28, 1979)

Dependent Relative Revocation

For a revocation clause of an Indian will to be effective the will itself must be admitted to probate.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

Disapproval of Will

Regardless of scope of administrative law judge's authority to grant or withhold approval of the will of an Indian under statute, there is not vested in the judge power to revoke a will which reflects a rational testamentary scheme disposing of trust or restricted property.

Estate of Gerald Martinez, Sr., 5 IBIA 162 (Aug. 13, 1976)
83 I.D. 162

Regardless of scope of administrative law judge's authority to grant or withhold approval of the will of an Indian under statute, there is not vested in the judge the power to revoke or rewrite a will or a part thereof which reflects a rational testamentary scheme disposing of trust or restricted property.

Estate of Dorothy Sheldon, 7 IBIA 11 (Feb. 7, 1978)
85 I.D. 31

Failure to Mention Child

The failure of a testator to provide for his wife or child or children in a will does not invalidate the will.

Estate of George Yellow Wolf, 5 IBIA 70 (Apr. 13, 1976)

Failure to Mention Spouse

The failure of a testator to provide for his wife or child or children in a will does not invalidate the will.

Estate of George Yellow Wolf, 5 IBIA 70 (Apr. 13, 1976)

Holographic Will

A holographic will that does not meet the requirement of attestation by two disinterested adult witnesses is invalid.

Estate of Emory Dennis Jones, 7 IBIA 164 (June 29, 1979)

INDIAN PROBATE--Continued

WILLS (*See also* INHERITING--if included in this Index.) --Continued

Insane Delusions

There is a difference between an insane delusion and a false belief. A belief is not an insane delusion where it is arrived at through a process of reasoning, even though such reasoning may be faulty, incorrect or illogical.

Estate of George E. Easley, IA-T-32 (July 13, 1978)

Lost Will

An Indian will may be presented for probate even though the estate of the decedent has been distributed as intestate property.

Estate of Joan (Joanna) Horsechief, 5 IBIA 182 (Sept. 29, 1976) 83 I.D. 362

Proof of Will

Departmental regulations require that an Indian will be executed in writing and attested by two disinterested adult witnesses.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

Facts of the case justified a finding by the administrative law judge that there was a failure to prove will where testimony to show testamentary act was scanty and where purported will was undated and was marked "signed copy."

Estate of Cleveland Iron Shooter, 7 IBIA 212 (Sept. 12, 1979)

Provisions of 25 CFR 4.233(c) requiring testimony of attesting witnesses to contested will to be taken at hearing on probate of will are mandatory when witnesses are available.

Estate of Joseph Caddo a.k.a. James Joseph Caddo and Jim Butler, 7 IBIA 286 (Nov. 28, 1979)

Publication

There is no requirement in the regulations or elsewhere that the attesting witnesses be present at the same time, or sign in the presence of the testatrix, or that the testatrix acknowledge her subscription to the will to the witnesses, or that she "publish" said instrument by declaring it to be her last will.

Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975) 82 I.D. 169
(*See also* 2 IBIA 53, 80 I.D. 617 (1974).)

There is no requirement in the Indian probate regulations or the applicable statutes that the testatrix, at the time of the execution of her will, "publish" the same by openly declaring it to be her last will and testament.

Estate of Fannie Newrobe Choate, 7 IBIA 171 (July 31, 1979)

INDIAN PROBATE--Continued

WILLS (*See also* INHERITING--if included in this Index.) --Continued

Revocation

For a revocation clause of an Indian will to be effective the will itself must be admitted to probate.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

Self-proved Wills

Under the circumstances of a contested will which includes a devise of property to a brother long dead, a "self-proved will" does not pass muster by perfunctory questioning of witnesses. Further, although the task of the administrative law judge to develop a complete record may be made more difficult by the absence of counsel for the parties, this important function must still be satisfied.

Estate of Peahner (Mabel) (Mable) Pahsset, 5 IBIA 27 (Feb. 23, 1976)

State Law

Applicability to Indian Probate, Testate

A power of appointment is a power of disposition given to a person or persons over property not their own, by someone who directs the mode in which that power shall be exercised by a particular instrument. It is an authorization to do an act which the owner granting the power might himself by law fully perform.

A power of appointment included in a purported Indian will concerning trust allotments or restricted personal property is not valid unless first approved by the Secretary of the Interior or his duly appointed subordinate.

Estate of Daniel J. Pierre, 6 IBIA 17 (Jan. 28, 1977) 84 I.D. 68

Testamentary Capacity

Generally

To be competent to make a will the testatrix had to know without prompting not only who were the natural objects of her bounty but also the nature and extent of the property of which she was about to dispose, and the consequences of the dispositions which she was making.

Estate of Joseph Red Eagle, 4 IBIA 52 (May 30, 1975) 82 I.D. 256

The general rule that an administrative law judge's finding of testamentary capacity rendered after consideration of conflicting testimony will not be disturbed on appeal is not an unqualified rule. The judge's finding must be supported by substantial evidence and the evidence relied upon must be competent.

Under the circumstances of a contested will which includes a devise of property to a brother long dead, a "self-proved will" does not pass muster by perfunctory questioning of witnesses. Further, although the task of the administrative law judge to develop a complete record may be made more difficult by the absence of counsel for the parties, this important function must still be satisfied.

Estate of Peahner (Mabel) (Mable) Pahsset, 5 IBIA 27 (Feb. 23, 1976)

INDIAN PROBATE--Continued

WILLS (*See also* INHERITING--if included in this Index.) --Continued

Testamentary Capacity--Continued

Generally--Continued

The burden of proof as to testamentary incapacity in Indian probate proceedings is on the one contesting the will, and an aged Indian is not deemed to be incapacitated from making a valid will by being a chronic alcoholic or by being unable to manage his own affairs.

Estate of Louis Baptist, 5 IBIA 48 (Mar. 8, 1976)

Testator's reference to unrelated sole devisee as his "nephew" in his last will and testament is possible evidence bearing on the mental capacity of testator, but such reference is not in itself dispositive of the issue of alleged testamentary incapacity. From a consideration of all the evidence, we hold that testator's reference to devisee as his "nephew" in his will does not show that decedent was unable to recognize the natural objects of his bounty or that he was otherwise in an irrational state when the will was executed.

Estate of Hank Cluette, 6 IBIA 47 (Apr. 1, 1977)

A judge's findings regarding testamentary capacity will not be set aside where supported by evidence adduced at a probate hearing on the will.

Estate of Felix Walking, a/k/a Philip Walking, 6 IBIA 153 (Oct. 12, 1977)

A testator does not lack testamentary capacity merely because he is unable to manage his own business affairs or is under guardianship.

Estate of George B. Easley, IA-T-32 (July 13, 1978)

The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will, and an Indian is not deemed to be incompetent to make a will by virtue of her being unable to manage her own property or business affairs or by appointment of a guardian for her.

Being aged and uneducated, being unable to read or write, being unable to understand the English language, and possessing impaired hearing and poor eyesight are conditions that do not necessarily disqualify one from making a will.

Estate of Fannie Newrobe Choate, 7 IBIA 171 (July 31, 1979)

Inability to read the English language alone does not prevent one from making a valid will, even though the will is written in English.

Estate of George Tsalote, 7 IBIA 261 (Oct. 30, 1979)

Alcohol

Testimony of physician, based on his treatment and observation of testator at various times, to the effect that testator may have suffered permanent brain damage and disease but which is inconclusive as to whether testatory had testamentary capacity does not support a finding of testamentary incapacity when the scrivener and other witnesses testified that from their conversations with and observations of testator at and/or about the time the will was executed they believed him to be sober, alert and in all respects competent to make a will.

Estate of Arnold Ross, 5 IBIA 277 (Dec. 21, 1976)

Undue Influence

Generally

Undue influence must be a "wrongful influence," and influence acquired through kindness, affection, or attention, especially of one relative for another, is not wrongful.

Estate of George B. Easley, IA-T-32 (July 13, 1978)

To invalidate a will on the ground of undue influence contestants must show such influence to have been exerted to the extent of destroying the free will of the testatrix or that the will of another was substituted for that of the testatrix and this amounts to more than the opportunity or possibility that undue influence was brought to bear on the testatrix.

Estate of Fannie Newrobe Choate, 7 IBIA 171 (July 31, 1979)

Estate of Minnie Moves Camp, 7 IBIA 266 (Nov. 15, 1979)

Whether undue influence had been exerted to obtain will of testator in feeble health and dependent situation is the sole issue in case where the will was obtained with the assistance of testator's son-in-law who stood to benefit under the will made and who used a power of attorney to make gifts of testator's money to others.

Estate of Joseph Caddo a.k.a. James Joseph Caddo and Jim Butler, 7 IBIA 286 (Nov. 28, 1979)

Failure to Establish, Generally

To invalidate an Indian will because of undue influence, it must be shown: (1) that the decedent was susceptible to being dominated by another; (2) that the person allegedly influencing the decedent in the execution of the will was capable of controlling his mind and actions; (3) that such person, at the time of the testamentary act, did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975) 82 I.D. 169
(*See also* 2 IBIA 53, 80 I.D. 617 (1974).)

Undue influence will not be presumed where the evidence affirmatively discloses that the beneficiary of a will who accompanied the testator to the office of the scrivener was not present when the terms of the will were discussed or when the will was executed.

Estate of Arnold Ross, 5 IBIA 277 (Dec. 21, 1976)

INDIAN PROBATE--Continued

WILLS (*See also* INHERITING--if included in this Index.) --Continued

Undue Influence--Continued

Failure to Establish, Generally--Continued

It is proper to deny a petition for rehearing in the matter of the approval of the last will and testament of a deceased Indian where the record satisfactorily shows that the will was properly executed by one possessing the requisite testamentary capacity.

Estate of Winnie Moves Camp, 7 IBIA 266 (Nov. 15, 1979)

Failure to Establish, Opportunity

The Department of the Interior has held consistently that mere suspicion or an opportunity to influence testator's mind will not sustain an allegation of undue influence where convincing proof is lacking that a person did actually exert influence or there was pressure operating directly upon the testamentary act.

Estate of Joseph Red Eagle, 4 IBIA 52 (May 30, 1975)
82 I.D. 256

The mere fact that a beneficiary in a will or other grandchildren were in a position to exert undue influence on the testator is insufficient to establish the invalidity of the will, when convincing proof that the beneficiary or others actually exerted undue influence is lacking.

Estate of Arnold Ross, 5 IBIA 277 (Dec. 21, 1976)

The Department of the Interior has consistently held that mere suspicion or an opportunity to influence testatrix's mind will not sustain an allegation of undue influence where convincing proof is lacking that a person did actually exert influence or there was pressure operating directly upon the testamentary act.

Estate of Fannie Newrobe Choate, 7 IBIA 171 (July 31, 1979)

Unnatural Will

The fact that an Indian Testator believes he has no heir and that his property would escheat to the State should he die intestate does not affect a devise under his will.

Estate of Vincent Victorio Natalish, Jr., 5 IBIA 1 (Jan. 19, 1976)

For the Secretary to withhold approval of testator's will in this case, which omits his illegitimate child and sole heir at law, would be tantamount to applying a "just and equitable" standard in passing on an Indian's will, which is the precise error in Departmental judgment previously condemned by the Supreme Court.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

INDIAN PROBATE--Continued

WILLS (*See also* INHERITING--if included in this Index.) --Continued

Unnatural Will--Continued

An unequal distribution by will to the natural objects of testator's bounty does not constitute an inequitable or unnatural will.

Estate of George E. Tesley, IA-T-32 (July 13, 1976)

Witnesses, Attesting

An attesting witness is disqualified from acting in an attesting capacity only if his interest in the will is of a fixed, certain, and vested pecuniary character, or one which otherwise gives him a direct and immediate beneficial right under the will.

There is no requirement in the regulations or elsewhere that the attesting witnesses be present at the same time, or sign in the presence of the testatrix, or that the testatrix acknowledge her subscription to the will to the witnesses, or that she "publish" said instrument by declaring it to be her last will.

Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975)
82 I.D. 169
(*See also* 2 IBIA 53, 80 I.D. 617 (1974).)

Departmental regulations require that an Indian will be executed in writing and attested by two disinterested adult witnesses.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

An Indian of the age of 21 years or over and of testamentary capacity, who has any right, title, or interest in trust property, may dispose of such property by a will executed in writing and attested by two disinterested adult witnesses.

Estate of Perry Dennis Juneau, 7 IBIA 164 (June 29, 1979)

Applicable Departmental regulations do not require that the attesting witness know the language of the testatrix; it is required that the witness merely know that she is acting as an attesting witness.

Estate of Fannie Newrobe Choate, 7 IBIA 171 (July 31, 1979)

Facts of the case justified a finding by the administrative law judge that there was a failure to prove will where testimony to show testamentary act was scanty and where purported will was undated and was marked "signed copy."

Estate of Cleveland Iron Shooter, 7 IBIA 212 (Sept. 12, 1979)

WITNESSES

Cross-examination

A full and true disclosure of the facts was denied when only the presiding judge was permitted to ask questions of a crucial witness. This procedure violated sec. 7(c) of the Administrative Procedure Act.

Estate of Rosa Marie Edge, 7 IBIA 53 (Apr. 25, 1978)

INDIAN PROBATE--Continued

WITNESSES--Continued

Observation by Administrative Law Judge

Where testimony is conflicting, the factual findings of the administrative law judge will not be disturbed because he had the opportunity to observe and hear the witnesses.

Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975) 82 I.D. 169
(*See also* 2 IBIA 53, 80 I.D. 617 (1974).)

YAKIMA TRIBES

Generally

Absent regulations requiring otherwise the most equitable valuation date would be the date the Tribe elects to purchase the property of a noneligible heir or devisee.

Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles and Caroline J. Charles (Frendale), 5 IBIA 96 (May 21, 1976) 83 I.D. 209

Absent controlling guidelines in the statute concerning valuation date (fair market value), it is more equitable to charge the Yakima Tribe the fair market value of the property as of the date the Tribe elected to purchase same, *i.e.*, Jan. 25, 1974.

Estate of Temens (Timens) Vivian Gardafee, 5 IBIA 113 (May 27, 1976) 83 I.D. 216

A statutory option held by the Tribe to take such interests in lands which pass to specific heirs or devisees who are not enrolled members of the Tribe does not vest any rights in said interests until payment by the Tribe of the fair market value as determined by the administrative law judge, after hearing if demanded, plus unpaid interest.

Fair-market value date is considered to be the date of hearing to determine value or if no hearing, the date the judge makes an independent finding and judgment as to the fair market value of the interest to be taken.

Estate of Edward Lewis Pitt, 6 IBIA 156 (Oct. 17, 1977) 84 I.D. 854

The fair market value date is considered to be the date of hearing to determine value.

Interest is due and payable only on the unpaid balance of the fair market value as determined from the date of filing the election to take by the Tribe.

A statutory option held by the Tribe to take interest in land under the Act of Dec. 31, 1970 (84 Stat. 1874, 25 U.S.C. § 607 (1970)), does not vest any right in such interests until payment by the Tribe of the fair market value as determined by the administrative law judge after hearing if demanded, plus interest.

Estate of Joseph Simmons, Sr., 7 IBIA 43 (Mar. 31, 1978)

INDIAN PROBATE--Continued

YAKIMA TRIBES--Continued

Valuation Reports

The Board is not bound by the Bureau of Indian Affairs' appraisal, report and findings contained therein. Instead, the Board will give consideration to the complete record, including the BIA appraisal, report and findings in arriving at its findings and determination.

Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles and Caroline J. Charles (Frendale), 5 IBIA 96 (May 21, 1976) 83 I.D. 209

INDIAN TRIBES
(*See also* Indian Probate--if included in this Index.)

GENERALLY

Title I of the Highway Beautification Act, 79 Stat. 1028, which applies to all "public lands or reservations of the United States," does not apply to Indian reservations.

Public Law 280, 67 Stat. 588-90, did not grant to States general civil regulatory powers over Indian reservations. Nor could this be accomplished by Departmental regulation, Secretarial Order or other directive.

California's Outdoor Advertising Act, implementing the Highway Beautification Act, 79 Stat. 1028, may not be applied to non-Indian lessees on the Morongo Indian Reservation.

The Department's policy established in 1965 of requiring lessees of Indian lands in California to comply with State standards regulating land use and development can be achieved without subjecting developing tribal governments to the full enforcement powers of the State, viz., through adding appropriate State standards to the provisions of any lease.

Administrative Appeal of the Morongo Band of Mission Indians v. Area Director, Sacramento Area Office, 7 IBIA 299 (Dec. 13, 1979) 86 I.D. 660

ATTORNEYS

Fees

In the absence of an approved contract as required by 25 U.S.C. § 476 (1970), fees for legal services allegedly performed during the interim will not be allowed.

Administrative Appeal of Roy T. Pobley v. Commissioner of Indian Affairs and Jicarilla Apache Tribe, 4 IBIA 1 (Apr. 4, 1975) 82 I.D. 119

CONSTITUTION, BYLAWS AND ORDINANCES

Nomination and election of tribal officers are governed by the provisions of its constitution.

Administrative Appeal of Doc Pewewardy v. Commissioner, Bureau of Indian Affairs, et al., 3 IBIA 259 (Feb. 12, 1975)

INDIAN TRIBES--Continued

CONSTITUTION, BYLAWS AND ORDINANCES--Continued

The organic law of the Hopi Tribe found in a constitution authorized by statute, formulated and adopted by the tribal members and approved by the Secretary of the Interior, should be construed for its ultimate meaning under the same rules as are applied in the construction of State and Federal constitutions and statutes.

Administrative Appeal of The Hopi Indian Tribe v. Commissioner, Bureau of Indian Affairs, 4 IBIA 134 (Sept. 26, 1975) 82 I.D. 452

The Department of the Interior has generally deferred to the tribe or tribal council when the interpretation of a constitution involves two reasonable alternatives.

Administrative Appeal of Ralph Davis v. Commissioner, Bureau of Indian Affairs and Sac and Fox Tribe of Oklahoma, 4 IBIA 228 (Nov. 25, 1975)

Acts of Tribal Chairmen done in contravention of their respective Tribal Constitutions and Bylaws are void from their inception and not binding upon their respective Tribes.

Administrative Appeal of Joe McComas, 5 IBIA 125 (June 11, 1976) 83 I.D. 227

The Department is not bound by a tribal ordinance regulating trust property where such ordinance violates provisions of the tribal constitution and bylaws which the Secretary has sworn to uphold.

Administrative Appeal of Oglala Sioux Tribe v. Commissioner of Indian Affairs and Richard Tall (PRO-10542), 7 IBIA 188 (Sept. 5, 1979) 86 I.D. 425

ELECTIONS

Generally

Nomination and election of tribal officers are governed by the provisions of its constitution.

Administrative Appeal of Doc Pewewardy v. Commissioner, Bureau of Indian Affairs, et al., 3 IBIA 259 (Feb. 12, 1975)

ENROLLMENT

For purposes of which the tribe has complete control, the tribe conclusively determines membership; but where Departmental action is authorized, the Department may approve or disapprove the membership rolls of the tribe.

Administrative Appeal of Jennifer Rae McQueen, A Minor, By Hazel McQueen, As Next Friend v. Confederated Salish and Kootenai Tribes, Flathead Reservation, Montana, 4 IBIA 65 (June 3, 1975) 82 I.D. 261

HUNTING AND FISHING

On Reservation

18 U.S.C. § 1165 (1970) confirms the right of Indian Tribes to control, regulate and license hunting and fishing within their reservations.

Opinion on the Boundaries of and Status of Title to Certain Lands Within the Colville and Spokane Indian Reservations, M-36887 (Feb. 2, 1977) 84 I.D. 72

INDIAN TRIBES--Continued

JUDGMENT FUNDS

The preparation of a plan providing for the use and distribution of judgment funds under the Act of Oct. 19, 1973 (25 U.S.C. § 1401 *et seq.*, 87 Stat. 466) by the Secretary of the Interior to be submitted to the Congress for approval entails the exercise of the Secretary's discretion and is beyond the authority delegated to the Board of Indian Appeals in (211 D.M. 13.7) Dec. 14, 1973.

Administrative Appeal of Benedict Jozhe and Ft. Sill Apaches v. Commissioner of Indian Affairs, 3 IBIA 266 (Feb. 25, 1975)

JURISDICTION

18 U.S.C. § 1165 (1970) confirms the right of Indian Tribes to control, regulate and license hunting and fishing within their reservations.

Opinion on the Boundaries of and Status of Title to Certain Lands Within the Colville and Spokane Indian Reservations, M-36887 (Feb. 2, 1977) 84 I.D. 72

An Indian tribe may exercise criminal jurisdiction over its members concurrently with a State where the State has assumed jurisdiction over the tribe's reservation pursuant to the Act of Aug. 15, 1953, P.L. 280, 67 Stat. 588, 18 U.S.C. § 1162 (1976).

Criminal Jurisdiction on the Seminole Reservations in Florida, M-36907 (Nov. 14, 1978) 85 I.D. 433

SOVEREIGN POWERS

An Indian tribe may exercise criminal jurisdiction over its members concurrently with a State where the State has assumed jurisdiction over the tribe's reservation pursuant to the Act of Aug. 15, 1953, P.L. 280, 67 Stat. 588, 18 U.S.C. § 1162 (1976).

Criminal Jurisdiction on the Seminole Reservations in Florida, M-36907 (Nov. 14, 1978) 85 I.D. 433

TRIBAL AUTHORITY

The organic law of the Hopi Tribe found in a constitution authorized by statute, formulated and adopted by the tribal members and approved by the Secretary of the Interior, should be construed for its ultimate meaning under the same rules as are applied in the construction of State and Federal constitutions and statutes.

Administrative Appeal of The Hopi Indian Tribe v. Commissioner, Bureau of Indian Affairs, 4 IBIA 134 (Sept. 26, 1975) 82 I.D. 452

The Department of the Interior has generally deferred to the tribe or tribal council when the interpretation of a constitution involves two reasonable alternatives.

Administrative Appeal of Ralph Davis v. Commissioner, Bureau of Indian Affairs and Sac and Fox Tribe of Oklahoma, 4 IBIA 228 (Nov. 25, 1975)

INDIAN TRIBES--Continued

TRIBAL AUTHORITY--Continued

Acts of Tribal Chairmen done in contravention of their respective Tribal Constitutions and Bylaws are void from their inception and not binding upon their respective Tribes.

Administrative Appeal of Joe McComan, 5 IBIA 125 (June 11, 1976) 83 I.D. 227

Tribes as a treaty right have the authority to impose restrictions or limitations as to who may be permitted to travel within a closed area of a reservation.

Administrative Appeal of Frank L. Glasgey, Jr., 7 IBIA 92 (Aug. 17, 1978)

INDIAN WATER AND POWER RESOURCES

GENERALLY

Sec. 5(b) of the Act of May 25, 1948 (62 Stat. 269) is not applicable to those tribal lands upon which the Flathead Irrigation Project's Kerr Substation and Switchyard are located.

Relocation of Flathead Irrigation Project's Kerr Substation and Switchyard, M-36735 (Supp.) (Sept. 24, 1976) 83 I.D. 346

IRRIGATION PROJECTS

A recreation and public purposes application must be rejected for lands temporarily withdrawn for an irrigation project to benefit Indians. Such a withdrawal is effective until specifically revoked, even though it is made on a temporary basis and has been in effect for more than 50 years.

Elko County Board of County Supervisors, 29 IBLA 220 (Mar. 23, 1977)

INDIANS

GENERALLY

A recreation and public purposes application must be rejected for lands temporarily withdrawn for an irrigation project to benefit Indians. Such a withdrawal is effective until specifically revoked, even though it is made on a temporary basis and has been in effect for more than 50 years.

Elko County Board of County Supervisors, 29 IBLA 220 (Mar. 23, 1977)

CRIMINAL JURISDICTION

An Indian tribe may exercise criminal jurisdiction over its members concurrently with a State where the State has assumed jurisdiction over the tribe's reservation pursuant to the Act of Aug. 15, 1953, P.L. 280, 67 Stat. 588, 18 U.S.C. § 1162 (1976).

Criminal Jurisdiction on the Seminole Reservations in Florida, M-36907 (Nov. 14, 1978) 85 I.D. 433

INDIANS--Continued

WELFARE

Where the manual for the conduct of the business of the Bureau of Indian Affairs is issued by the Commissioner under authority delegated by the Secretary, the Board of Indian Appeals lacks jurisdiction to declare the policy reflected by the provisions of the manual to be improper or void or unconstitutional.

Administrative Appeal of Hannah Pinnesand, A Native Alaska Indian v. Commissioner of Indian Affairs, 3 IBIA 263 (Feb. 25, 1975)

INTERVENTION

Where a grazing district cattle trespass complaint refers to previous trespasses by the base property owner, he is served with the complaint, and the record indicates he intervened at the hearing thereon but the decision issued makes no mention thereof, the decision appealed from may be set aside and remanded for clarification.

United States v. John J. Casey, 22 IBLA 358 (Nov. 14, 1975) 82 I.D. 546

Intervention, by right, as a full party in a contest proceeding is only recognized where the individual seeking intervention has the necessary interest to maintain a private contest independently under 43 CFR 4.450-1.

The extent of the participation in a contest hearing to be afforded "interested individuals" who do not have a sufficient interest to maintain a private contest is committed to the sound discretion of the administrative law judge. Among the factors which are properly considered are: the desires of the original parties; the likelihood that the party seeking intervention will provide information which would not be forthcoming without its participation; and the cost which must be borne by both the contestant and the contestee by the nature and scope of the intervention granted.

United States v. United States Pumice Co., 37 IBLA 153 (Oct. 5, 1978)

JUDICIAL REVIEW

(See also Administrative Procedure--if included in this Index.)

Where the Board of Land Appeals, by a previous decision, has held that a particular oil and gas lease offer must be rejected, and the rejected applicant files suit for judicial review of that decision in the United States District Court, and also files a contemporaneous appeal to the Board from a BLM decision implementing the Board's decision, the Board will defer to the Court's jurisdiction and make no decision on the merits of the appeal, which is subject to summary dismissal by the Board.

Donald W. Cover (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

Where the holder of an oil and gas lease on the Outer Continental Shelf has filed a suit in a Federal district court to recover certain royalties paid under his lease, the Board of Land Appeals will affirm a decision of the Director, Geological Survey, holding in abeyance the lessee's request for a refund while the suit is pending.

Tenneco Oil Co., 41 IBLA 195 (June 22, 1979)

LACHES

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970) and 43 U.S.C. § 898 (1970), in which case a hearing need not be ordered to determine whether a railroad's purchaser was an innocent purchaser for value.

Southern Pacific Transportation Co., Donald K. Lee, Charles Siller v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescences of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

LIEU SELECTIONS

An application by a State for an indemnity school and land selection is not subject to rejection for the sole reason that the base lands are less valuable than the selected lands.

When a State files an indemnity school land application and selects lands withdrawn for leasable minerals and it is determined that disposal of such lands would unreasonably interfere with operations under the mineral leasing laws, such application may be rejected. However, when the State offers to waive the reserved leasable minerals and to allow reasonable surface entry for development and removal of the minerals, the application should be reevaluated in light of such offer.

State of New Mexico, 24 IBLA 135 (Mar. 8, 1976)

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

The acceptance by a State of other lands as indemnity for lands lying within the meander line of a nonnavigable lake adjacent to the granted upland school section, was a relinquishment of any interest in the adjacent land underlying the lake as an incident to the grant of the school section to the extent such land lies within the linear boundaries of the school section, and precludes the assertion of a State claim to such lands.

State of Montana, 28 IBLA 124 (Nov. 16, 1976)

LIEU SELECTIONS--Continued

Under 43 U.S.C. § 852(a)(1) (1970), *as amended* by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

For sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these rights be given to the State by deleting the reservation thereof in the clear list.

Where the record indicates that there may be gross disparity between the value of lands selected by a State as indemnity for lost school lands and the value of base lands submitted by the State in support of the selection, the matter will be remanded to the BLM for revaluation of the lands. If the revaluation reveals a gross disparity, the BLM shall withhold further action until judicial resolution of the propriety of the "grossly disparate value" policy.

State of California, 33 IBLA 160 (Dec. 20, 1977)

LOWER COLORADO RIVER LAND USE

Where it is indicated that a proposed BLM management plan may require termination of permits now granting occupancy of lands in the Lower Colorado River Land Use Area on a renewable basis annually, it is not an abuse of discretion to deny approval to an assignment of such a permit pending final approval of the management plan.

Kenneth Caughlin, Scott Thomas, D-77-4 (Oct. 16, 1977)

It is not an abuse of discretion or arbitrary or capricious for the District Manager, Yuma District, to deny requests for renewals of residential permits in the Parker Strip, Lower Colorado River Land Use Area, for 5 years, in lieu of the existing permits of indefinite term subject to annual renewal, where the permits are subject to the provision that the United States may terminate the permits after 90 days written notice.

Earl W. Archer et al., Robert F. Moore et al., D-78-1, D-78-2 (Aug. 9, 1978)

It is proper to cancel a residential cabin site permit in the Lower Colorado River Land Use Area for continued commercial use in violation of the terms of the permit.

Asa E. Haynes, Wanda L. Russell, D-76-8 (Aug. 31, 1976)

LOWER COLORADO RIVER LAND USE--Continued

A permit for use of land in the Lower Colorado River Area is properly terminated where construction, unauthorized by the terms of the permit, is undertaken by individuals occupying the premises, whose earlier application for an assignment of rights of the permittee has been rejected by BLM.

Robert D. Wall, D-79-7 (Aug. 23, 1979)

MATERIALS ACT

Where approval of an application to purchase sand and gravel pursuant to the Materials Disposal Act of 1947 is opposed by a Native village which has already selected the land on which the sand and gravel is located, and to whom conveyance is imminent, the application will be rejected.

Clarence Wren, 20 IBLA 47 (Apr. 21, 1975)

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

Good Roads District No. 1, 25 IBLA 123 (June 7, 1976)

Where a contract for the sale of vegetative resources (pine nuts) contains a disclaimer of warranty by the vendor (Government) as to the quantity of resources sold, the parties are deemed to have contracted on the assumption that there was doubt as to the quantity, and the risk with respect to such factor must be considered to have been assumed by the purchaser as one of the elements of the bargain. Thus, the fact that the quantity of the resource available for harvesting turned out to be less than was expected at the time of contracting is not a basis for a claim to a refund.

Where appellant alleges a loss of vegetative resources (pine nuts) which he purchased occurring subsequent to the time of contracting and prior to severance, due to severe and unusual damage by birds, and the contract of sale provides that the risk of loss shall remain in the Government and not pass to purchaser until such vegetative resources have been severed or extracted, appellant's claim for a refund is governed by the risk of loss provision rather than a disclaimer of warranty as to quantity contained in a separate part of the contract.

Alma LeBaron, Jr., 25 IBLA 164 (June 14, 1976)

Minerals which are subject to location under the general mining law on public land outside the Lake Mead Recreation Area are subject to the leasing provisions of the Act of Oct. 8, 1964, within the Recreation Area. But, minerals which are disposable by sale under the 1947 Materials Act when situated outside the Recreation Area are also subject to such disposal within it.

Rilite Aggregate Co., 26 IBLA 197 (Aug. 11, 1976)

The Bureau of Land Management, under 43 CFR 5442.3, has the authority to reject bids submitted for timber sales where it rationally determines that rejection is in the Government's interest.

Cabax Mills, 32 IBLA 225 (Sept. 20, 1977)

MATERIALS ACT--Continued

A party seeking a partial refund of the purchase price under the risk of loss provision of a contract for the cash sale of vegetative resources pursuant to the Materials Act of July 31, 1947, must present substantial evidence of the quantity of resources lost which otherwise would have been harvested.

Alma E. LeBaron, Jr., 32 IBLA 299 (Sept. 29, 1977)

Where the purchaser of rock under a cash sale contract authorized by the Materials Act of July 31, 1947, as amended, 30 U.S.C. § 601 et seq. (1970), fails to remove any of the rock and requests a credit for the purchase price, such a request will be denied as being tantamount to a refund and purchaser under a fixed unit material sale is not entitled to a refund even though the amount of material removed is less than the estimated total volume shown in the contract.

Weyerhaeuser Co., 33 IBLA 259 (Jan. 5, 1978)

The purchaser of rock under a cash sale contract authorized by the Materials Act of July 31, 1947, as amended, 30 U.S.C. § 601 et seq. (1970), is entitled to a refund, based on resale value less administrative costs, for rock covered by the contract which is available but not removed from the site by such purchaser.

Weyerhaeuser Co. (On Reconsideration), 34 IBLA 244 (Mar. 28, 1978)

A decision by a Bureau of Land Management District Office rejecting an application for an extension of a mineral materials sale contract solely for the reason it was not timely filed in accordance with 43 CFR 3610.7 will be set aside and remanded for the authorized officer to determine whether the application may be considered as timely pursuant to 43 CFR 1821.2-2(g). This section permits the authorized officer to consider a document as being timely filed except where the law does not permit him to do so, the rights of a third party or parties have intervened, or the authorized officer determines that further consideration of the document would unduly interfere with the orderly conduct of business.

Don Holland Materials, Inc., 35 IBLA 133 (May 22, 1978)

In a competitive materials sale, submission of the required 10 percent deposit in cash with the sealed bid is permissible under the regulations and not a ground for rejection of the highest bid. Therefore, a protest against acceptance of the bid for that reason is properly denied.

Roy Blake, 38 IBLA 151 (Dec. 5, 1978)

MILLSITES

(See also Mining Claims--if included in this Index.)

GENERALLY

Mining claims and millsites located upon land which has been previously withdrawn from entry under the mining laws by a first-form reclamation withdrawal are void ab initio. Because Departmental Order No. 2515 delegated authority to revoke such a withdrawal to the Bureau of Reclamation with the concurrence of the Bureau of Land Management, the land remains withdrawn from mining locations when the Bureau of Land Management does not

MILLSITES--Continued

GENERALLY--Continued

concur with the recommendation of the Bureau of Reclamation to revoke the withdrawal and restore the land to entry.

J. P. Hinds et al., 25 IBLA 67 (June 1, 1976)
83 I.D. 275

Where a millsite is not being used for mining or milling purposes in connection with a mining claim owned by the owner of the millsite, and at the time of contest there is no quartz mill or reduction works on the site, the millsite must be declared null and void.

United States v. Aloys A. Dietemann and Doris E. L. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

United States v. Wayne E. Highley, 30 IBLA 21 (Apr. 7, 1977)

DETERMININATION OF VALIDITY

When the Government contests a mining claim, by practice it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Likewise, a millsite claimant has the burden of establishing the validity of his claim by a preponderance of the evidence.

United States v. Aloys A. Dietemann and Doris E. L. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

Where millsites are not used for mining or milling purposes in conjunction with a mining claim, and where no quartz or reduction works exist on the millsites, the millsites are properly declared null and void.

United States v. Robert A. Rukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

A mineral claimant who has not made a discovery of a valuable mineral deposit within the limits of his lode or placer mining claims is not the proprietor of a "vein, lode or placer" within the context of 30 U.S.C. § 42 (1970), and cannot establish any right to a millsite claim based on such unperfected mining locations.

United States v. Ray Paden, 33 IBLA 380 (Jan. 25, 1978)

Where the primary reason for the State Office rejection of a millsite application appears to be that the Environment Protection Agency has recommended against the issuance of a patent because of possible adverse effects on the environment which the Federal Government will not be able to control if patent issues, the decision of the State Office will be reversed where the applicant shows that he has fulfilled the requirement of 30 U.S.C. § 42 (1970), and where the State having jurisdiction over the operation after patent issues has a strict environmental protection law with safeguards against possible adverse effects on the environment.

Utah International, Inc., 36 IBLA 219 (Aug. 8, 1978)

MILLSITES--Continued

DETERMININATION OF VALIDITY--Continued

Where a millsite is located in conjunction with certain mining claims which are found to be invalid, and the millsite is not being used for any purpose associated with mining, the mere presence of water on the millsite which could be used for mining or milling in the event such activities should transpire is not sufficient to support a finding that the millsite claim is valid.

United States v. Emmett C. Harder, 42 IBLA 206 (Aug. 22, 1979)

Three classes of millsites are authorized by 30 U.S.C. § 42 (1976): (1) those occupied by the proprietor of a vein or lode for mining and milling purposes; (2) those that have thereon quartz mills or reduction works; and (3) those that are used by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim.

The validity of an independent millsite claim, *i.e.*, one not located ancillary to a valid mining claim, depends upon three factors: (1) the claim must be used in good faith for a mining or milling purpose; (2) it must contain a quartz mill or reduction works on the premises for processing mineral material from a vein or lode; and (3) it must be operated in an ongoing and more or less continuous manner for custom work. Where a quartz mill or reduction works is operated sporadically only as a "spare time" enterprise, the millsite is properly declared invalid.

United States v. Ray Paden, 44 IBLA 253 (Dec. 19, 1979)

INDEPENDENT

Three classes of millsites are authorized by 30 U.S.C. § 42 (1976): (1) those occupied by the proprietor of a vein or lode for mining and milling purposes; (2) those that have thereon quartz mills or reduction works; and (3) those that are used by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim.

The validity of an independent millsite claim, *i.e.*, one not located ancillary to a valid mining claim, depends upon three factors: (1) the claim must be used in good faith for a mining or milling purpose; (2) it must contain a quartz mill or reduction works on the premises for processing mineral material from a vein or lode; and (3) it must be operated in an ongoing and more or less continuous manner for custom work. Where a quartz mill or reduction works is operated sporadically only as a "spare time" enterprise, the millsite is properly declared invalid.

United States v. Ray Paden, 44 IBLA 253 (Dec. 19, 1979)

PATENTS

Where the primary reason for the State Office rejection of a millsite application appears to be that the Environment Protection Agency has recommended against the issuance of a patent because of possible adverse effects on the environment which the Federal Government will not be able to control if patent issues, the decision of the State Office will be reversed where the applicant shows that he has fulfilled the requirement of 30 U.S.C. § 42 (1970), and where the State having jurisdiction over the operation after patent issues has a strict environmental protection law with safeguards against possible adverse effects on the environment.

Utah International, Inc., 36 IBLA 219 (Aug. 8, 1978)

MINERAL LANDS

GENERALLY

As only nonmineral lands may be appropriated under the law pertaining to headquarters sites, where the Geological Survey reports that a tract of entered land is nonmineral in character and the Bureau of Land Management therefore formally advises the claimant that the tract is subject to settlement or occupancy and officially acknowledges his claim, and the claimant thereafter complies fully with the law and applies for patent, a subsequent determination that the land is mineral in character will not vitiate the claim unless it is established that the original finding of nonmineral character was error, and that facts in existence at the time equitable title passed required a determination that the land was then mineral. Due process permits such action to be taken only after proper notice and opportunity for hearing.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

Where, after statehood, a designated school section is surveyed and returned as mineral land (coal) known to be mineral in character prior to the date when the rights of the State would have attached, and where prior to the Act of Jan. 25, 1927 (44 Stat. 1026), the land is withdrawn for national forest purposes, title to the section did not pass to the State.

Malcolm N. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

Lands known to be mineral in character (except for coal or iron) at the time of definite location of a railroad are excluded from the grant of place lands to the railroad even though the lands may later lose their mineral character.

Southern Pacific Transportation Co., Jay R. Fogal; Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976)
83 I.D. 1

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, a hearing will not be ordered and an appraisal will not be disturbed in the absence of an offer of specific substantial evidence that the determination is incorrect.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

The purpose of 30 U.S.C. § 38 (1976) whereby a person or association may establish a right to patent lands which said person or association has held and worked for a period equal to the statute of limitations is to obviate the necessity of proving formal compliance with requirements for locating a claim, but not to dispense with proof of discovery.

United States v. Leroy S. Johnson et al., 39 IBLA 337 (Feb. 28, 1979)

DETERMINATION OF CHARACTER OF

As only nonmineral lands may be appropriated under the law pertaining to headquarters sites, where the Geological Survey reports that a tract of entered land is nonmineral in character and the Bureau of Land Management therefore formally advises the claimant that the tract is subject to settlement or occupancy and officially acknowledges his claim, and the claimant thereafter complies fully with the law and applies for patent, a subsequent determination that the land is mineral in character will not vitiate the claim unless

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

it is established that the original finding of nonmineral character was error, and that facts in existence at the time equitable title passed required a determination that the land was then mineral. Due process permits such action to be taken only after proper notice and opportunity for hearing.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489, *as amended* by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end.

In a hearing on a patent application filed under the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), the Government has the obligation of making a prima facie case of mineral character between the date the railroad line was definitely located and the date of purchase, whereupon the applicant has the burden of establishing nonmineral character by a preponderance of the evidence.

Land included in an application under sec. 321(b) of the Transportation Act of 1940 is properly determined to be mineral in character between the date the railroad line was definitely located and the date of purchase where the land was covered by mining claims, evidence of extensive and successful mining on adjacent lands was established, and the subject land had similar surface geologic conditions when compared with the surface mineralization on adjacent lands having valuable mineral deposits.

Southern Pacific Co., Heirs of George H. Wedekind, 20 IBLA 365 (June 12, 1975)

A determination that land was known to be valuable for minerals leasable under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 *et seq.* (1970), at the time mining claims for such land were located, will be upheld where there has been a hearing on the question and the mining claimant has failed to produce evidence to overcome such a classification.

United States v. Long Beach Salt Co., 23 IBLA 41 (Dec. 2, 1975)

The period for determination by the Department of the Interior whether public land included within the primary limits of a legislative grant-in-aid of the construction of a railroad which excepts mineral land is mineral in character extends to the time of issuance of patent to the railroad company.

When the Department of the Interior finds that public land within the place limits of a legislative grant-in-aid of the construction of a railroad was mineral in character and the railroad company challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence.

Southern Pacific Transportation Co., Jay R. Fogal; Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976)
83 I.D. 1

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent of workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

Applications for phosphate prospecting permits are properly rejected by the Bureau of Land Management upon the basis of a determination by the Geological Survey that the lands applied for contain workable deposits of phosphate thus making the lands subject to the leasing provisions rather than the prospecting provisions of the Mineral Leasing Act. A review of the technical data relied upon by the Geological Survey in making its determination is not required where no evidence is submitted on appeal demonstrating error in that determination.

William F. Martin, 24 IBLA 271 (Mar. 30, 1976)

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

To establish the mineral character of railroad grant lands under the Act of July 1, 1862 (12 Stat. 489), *as amended*, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--on the critical date are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

When the Department of the Interior finds that public land within the place limits of a grant to a railroad under the Act of July 1, 1862, *as amended*, was mineral in character and the railroad company, filing for patent on behalf of an alleged bona fide purchaser from it, challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence, and the bona fides of the purchaser.

Southern Pacific Transportation Co., 32 IBLA 218 (Sept. 19, 1977)

MINERAL LANDS--Continued

LEASES

An application for a hardrock preference-right lease is properly rejected where the permittee does not demonstrate the existence of a workable deposit of the mineral for which the permit was issued, within the term of the permit.

The Hanna Mining Co., 20 IBLA 149 (May 5, 1975)

Where application is made to lease reserved minerals in lands patented to the State of California for park or other public purposes, the regulations do not require the discovery of a workable deposit of mineral of commercial quantity and quality as a pre-condition to the issuance of the lease. Indeed, a lease affords the only authority for the conduct of exploratory operations.

George W. Wright, Sr. (Deceased), 22 IBLA 280 (Oct. 30, 1975)

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Minerals which are subject to location under the general mining law on public land outside the Lake Mead Recreation Area are subject to the leasing provisions of the Act of Oct. 8, 1964, within the Recreation Area. But, minerals which are disposable by sale under the 1947 Materials Act when situated outside the Recreation Area are also subject to such disposals within it.

A decision to reject an application for a mineral lease within the Lake Mead Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to environmental protection.

Pilite Aggregate Co., 26 IBLA 197 (Aug. 11, 1976)

An application for a prospecting permit cannot be suspended and is properly rejected where the lands applied for are unavailable because they are private lands awaiting transfer of title to the United States.

LeRoy Pedersen, 31 IBLA 124 (June 30, 1977)

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

MINERAL LANDS--Continued

MINERAL RESERVATION

Where application is made to lease reserved minerals in lands patented to the State of California for park or other public purposes, the regulations do not require the discovery of a workable deposit of mineral of commercial quantity and quality as a pre-condition to the issuance of the lease. Indeed, a lease affords the only authority for the conduct of exploratory operations.

George W. Wright, Sr. (Deceased), 22 IBLA 280 (Oct. 30, 1975)

Where material involving a prior mineral reservation on acquired lands is first submitted on appeal, and the effect of a State statute and State court decree is in issue, it is appropriate to remand the case to the BLM State Office for further consideration.

A. W. Henderson, 30 IBLA 8 (Apr. 4, 1977)

Under 43 U.S.C. § 852(a)(1) (1970), *as amended* by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

Per sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these rights be given to the State by deleting the reservation thereof in the clear list.

Where the record indicates that there may be gross disparity between the value of lands selected by a State as indemnity for lost school lands and the value of base lands submitted by the State in support of the selection, the matter will be remanded to the BLM for revaluation of the lands. If the revaluation reveals a gross disparity, the BLM shall withhold further action until judicial resolution of the propriety of the "grossly disparate value" policy.

State of California, 33 IBLA 160 (Dec. 20, 1977)

As to gravel, interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether gravel is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 *et seq.* (1970), was not generally intended to give the grantee the right to use the land for mineral development and mineral development was to proceed only under the mineral laws.

"*Ejusdem generis*." The *ejusdem generis* rule of construction may not be invoked to exclude gravel from the scope of a reservation of "all the coal and other minerals" in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), because this rule of construction can only be effectively applied where there is a series of specific terms which define a class so that one may construe a general term by reference to that class.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates the Department of the Interior retaining continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

The declaration in the Surface Resources Act, 30 U.S.C. § 611 (1970), that no deposit of common varieties of gravel shall be deemed a valuable mineral deposit within the meaning of the mining laws, was not intended to operate as a conveyance, to holders of patents, of any minerals reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Gravel in a valuable deposit is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

A bond filed by a mining claim owner, covering lands patented under the Stock-Raising Homestead Act of Dec. 29, 1916, *as amended*, 43 U.S.C. §§ 291-301 (1970), need only be set in an amount to cover damages to crops, improvements, and the value of the land for grazing purposes within the limits of the mining claim. The *ad damnum* of the bond does not have to be sufficient to cover damages caused by a disruption of the surface owner's entire grazing operation.

Where surface owners object to the amount of a bond, submitted to the Bureau of Land Management under sec. 9 of the Stock-Raising Homestead Act of Dec. 29, 1916, *as amended*, 43 U.S.C. § 299 (1970), as being inadequate in amount, request a hearing thereon, but fail to tender any evidence which would impel the conclusion that a hearing is likely to be productive and meaningful, the request for a hearing is properly denied.

Elmer Silvers et al., 42 IBLA 11 (July 25, 1979)

NONMINERAL ENTRIES

A Bureau of Land Management decision rejecting a selection application by the State of Utah under its Miner's Hospital Grant because the land is deemed mineral in character due to a classification as valuable for oil, gas, and coal will be set aside because it failed to consider relevant statutes and regulations permitting

MINERAL LANDS--Continued

NONMINERAL ENTRIES--Continued

selections of land valuable for minerals leasable under the Mineral Leasing Acts with a reservation of the minerals to the United States.

A State selection application for lands valuable for leasable minerals may be rejected where it is determined that the disposal of the surface rights will unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts and there is a proper basis in the record for such a determination which is unrefuted by the applicant. However, if there is no substantiation in the record for the determination and a State asserts error, the case will be remanded to the Bureau of Land Management to reconsider the determination, with the Geological Survey, and substantiate the basis of any future determination.

State of Utah, Department of Natural Resources, 38 IBLA 85 (Nov. 15, 1978)

PROSPECTING PERMITS

A permit issued pursuant to sec. 402 of the President's Reorganization Plan No. 3 of 1946, and the Act of June 30, 1950, 16 U.S.C. § 508b (1970), shall not exceed the 20 years' duration. During the 20-year period at any time valuable minerals are discovered the permittee has the right to apply for a mining permit.

The Hanna Mining Co., 20 IBLA 149 (May 5, 1975)

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess et al., 27 IBLA 4 (Sept. 17, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to areas withdrawn for wildlife conservation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes, 27 IBLA 46 (Sept. 23, 1976)

Lands which have been designated by the Act of Aug. 13, 1949, as public domain are not leasable under the Mineral Leasing Act for Acquired Lands or Reorganization Plan No. 3 of 1946, even though they may have been acquired lands prior to the Act of Aug. 13, 1949. A prospecting permit for uranium on such lands will be denied.

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

John R. Meadows, 30 IBLA 14 (Apr. 4, 1977)

An application for extension of a hardrock prospecting permit is properly denied where the permittee has not met the conditions imposed by the permit terms and the regulations. Where extension of a prospecting permit is conditioned upon the drilling of an adequate test well or the excavation of an adequate trench pursuant to a prospecting plan approved in advance by the Mining Supervisor, Geological Survey, the allegation on appeal of certain research regarding location of former mines, electromagnetic surveys, and similar activities will not suffice to justify an extension.

Fred G. Cansler, 30 IBLA 273 (June 1, 1977)

An application for a prospecting permit cannot be suspended and is properly rejected where the lands applied for are unavailable because they are private lands awaiting transfer of title to the United States.

LeRoy Pedersen, 31 IBLA 124 (June 30, 1977)

Where the regulation allows the filing of an application for a prospecting permit on a copy of the approved form not correctly reproduced, and the application contains a statement that the applicant agrees to be bound by the term conditions on the approved form, an application which consists of a copy of only the first page of a two-page form is properly rejected when it is not accompanied by the required statement.

Where the regulations, 43 CFR 3511.2-4(a) and (b), allow an applicant for a prospecting permit to file a new application if his first was defective, but the defect is curable, the new application has priority only as of the date it is filed and does not retain the priority of the first application.

UOP, Inc., 31 IBLA 142 (June 30, 1977)

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 302

An applicant for prospecting permits is not the "sole party in interest," within the meaning of 43 CFR 3500.0-5(a), where another party participates in the preparation and filing of the application, and where an agreement exists at the time of filing under which the applicant is bound to assign to the other party any advantages gained by him from the applications.

Where a party is not the sole party in interest in applications for prospecting permits, his applications must be rejected under 43 CFR 3511.2-4(a)(7) if they do not comply with the mandatory provisions of 43 CFR 3502.7, which require submission of statements of all

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

parties' respective interests and of any agreement between them, and submission of evidence of the qualifications of all parties to hold prospecting permits.

Where a party files applications for prospecting permits as an attorney-in-fact of another party, he must disclose his status as an agent by designating his principal as the "applicant" on the application forms, and must, under 43 CFR 3502.3-1 and 3502.6-1(a), file statements of qualifications for both himself and his principal, as well as a copy of the agreement establishing his power of attorney, or his applications must be rejected under 43 CFR 3511.2-4(a)(7).

Willadean Patton, Essex Minerals, Inc., National Bulk Carriers, Inc., 32 IBLA 350 (Oct. 21, 1977)

Where a question arises on appeal as to the reasonableness of certain stipulations required prior to the issuance of uranium prospecting permits on lands administered by the Forest Service, the case will be remanded to allow the Forest Service and Bureau of Land Management to reexamine such stipulations.

Robert B. Schick, 34 IBLA 250 (Mar. 28, 1978)

A prospecting permit for coal is properly canceled under 43 CFR 3511.4-2(a)(1) for failure to pay annual rental on or before the anniversary date, as extended. An application for a preference right coal lease is properly rejected if it is based on prospecting permits which have been canceled for failure to pay rental timely.

Cortella Coal Corp., 35 IBLA 172 (May 23, 1978)

MINERAL LEASING ACT

(*See also* Coal Leases and Permits, Geothermal Leases, Oil and Gas Leases, Phosphate Leases and Permits, Potassium Leases and Permits, Sodium Leases and Permits--if included in this Index.)

GENERALLY

A determination that land was known to be valuable for minerals leasable under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 *et seq.* (1970), at the time mining claims for such land were located, will be upheld where there has been a hearing on the question and the mining claimant has failed to produce evidence to overcome such a classification.

Mining claims located in 1933 under the general mining laws, 30 U.S.C. § 21 *et seq.* (1970), on lands known to be valuable for minerals subject to leasing under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 *et seq.* (1970), are null and void ab initio because in 1933 such lands were not open to location and disposition under the mining laws; however, since the passage of the Act of Aug. 12, 1953, 30 U.S.C. § 501 (1970), and the Multiple Mineral Development Act of Aug. 13, 1954, 30 U.S.C. § 521 *et seq.* (1970), it is possible to locate a mining claim on lands covered by a mineral permit or lease, or application therefor, or which are known to be valuable for leasable minerals, but the leasable minerals are reserved to the United States.

United States v. Long Beach Salt Co., 23 IBLA 41 (Dec. 2, 1975)

MINERAL LEASING ACT--Continued

GENERALLY--Continued

The Mineral Leasing Act of 1920 vests the Department of the Interior with the discretion to lease public lands for oil and gas, including public lands in the national forests. Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing.

Chevron Oil Co., 24 IBLA 159 (Mar. 15, 1976)

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 262 (1970), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corp., 25 IBLA 153 (June 10, 1976)

When deciding whether issuance of a phosphate prospecting permit is appropriate, the Bureau of Land Management is entitled to rely on the reasoned opinion of Geological Survey as its technical expert. A mineral determination made by Geological Survey will not be disturbed in the absence of a clear and definite showing of error. However, when Survey later changes its own determination, the case will be remanded for further consideration.

Philip Shaiman, 25 IBLA 177 (June 14, 1976)

The Secretary of the Interior has complete discretion to determine whether the surface of public land reported as valuable for any leasable mineral should be disposed of and a nonmineral application may be allowed only if it is determined by the proper officer with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Act.

The Somerset Coal Co., 26 IBLA 127 (July 30, 1976)

Minerals which are subject to location under the general mining law on public land outside the Lake Mead Recreation Area are subject to the leasing provisions of the Act of Oct. 8, 1964, within the Recreation Area. But, minerals which are disposable by sale under the 1947 Materials Act when situated outside the Recreation Area are also subject to such disposals within it.

Dilite Aggregate Co., 26 IBLA 197 (Aug. 11, 1976)

The Mineral Leasing Act of 1920, *as amended and supplemented*, most recently by the Coal Leasing Amendments Act of 1975, allows the Secretary to authorize development of coal leases by methods which were not utilized by the industry at the time of passage of the 1920 Act. The broad grants of authority to the Secretary in the 1920 Act allow technological developments in the coal mining industry.

In Situ Gasification of Coal, M-36890 (May 24, 1977) 84 I.D. 244

MINERAL LEASING ACT--Continued

GENERALLY--Continued

The U.S. Geological Survey is the technical expert of the Department of the Interior in matters concerning geologic evaluations. The Bureau of Land Management is entitled to rely on mineral determinations of Survey, such as qualification of a test well as a discovery well defined by a unit agreement, in the absence of a clear and definite showing of error.

Corrine Grace, 30 IBLA 296 (June 1, 1977)

Oil and gas leases of Indian lands entered into under the 1938 Mineral Leasing Act (25 U.S.C. §§ 396a-396f (1970)) are not subject to the taxation proviso contained in 25 U.S.C. § 398 (1970). The 1924 Act's (25 U.S.C. § 398) taxation proviso applies to leases entered into under the 1891 Mineral Leasing Act (25 U.S.C. § 397 (1970)).

Fort Peck tribal lands are not "bought and paid for" under 25 U.S.C. § 397 (1970).

Tax Status of the Production of Oil and Gas from Leases of Fort Peck Tribal Lands under the 1938 Mineral Leasing Act, M-36896 (Nov. [illegible], 1977) 84 I.D. 905

"Other related products." "Other associated deposits." When sodium or potassium brines are covered by leases conveying the exclusive right to mine and dispose of sodium compounds and other related products or potassium compounds and other associated deposits, the leases convey the exclusive rights to all minerals dissolved in the brine, including lithium.

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978) 85 I.D. 171

Where an applicant for a preference right coal lease fails to respond to a request for further information needed to process his application within a prescribed period of not less than 60 days, under 43 CFR 3521.1(g)(3), BLM properly rejected the lease application.

The failure of an applicant for a preference right coal lease to respond to a request for further information needed to process his application is not excused because he relied on a third party who failed to recognize that such action was required.

Cortella Coal Corp., 35 IBLA 172 (May 23, 1978)

The Federal coal program was substantially revised in 1975 by the Secretary in proper exercise of his discretion. The Bureau of Land Management did not act in an arbitrary and capricious manner when, under the new coal policy, it suspended applications for coal prospecting permit extensions and the applications were eventually rejected because the Federal Coal Leasing Amendments Act of 1975 removed the authority to grant coal prospecting permit extensions. A program pursued

MINERAL LEASING ACT--Continued

GENERALLY--Continued

for a period of time under a statutory grant of discretionary authority may be reviewed and revised at any time provided it is not done in an arbitrary manner and is done within the authority granted by Congress.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978) 85 I.D. 161

Thomas C. Woodward, 35 IBLA 262 (May 31, 1978)

Sec. 9(b) of the Administrative Procedure Act, *as amended*, 5 U.S.C. § 558(c) (1976), does not apply to coal prospecting permit extension applications because the prospecting is not an "activity of a continuing nature" within the meaning of the statute. As the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 30 U.S.C. § 201 (1976), removed the Secretary of the Interior's discretion to grant extensions, applications for preference right leases filed after expiration of the initial 2-year permit term, and during pendency of extension applications, cannot be issued.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978) 85 I.D. 396

Applications for rights-of-way for oil and gas pipelines, or amendments thereto which were pending at the time of the passage of the Trans-Alaska Pipeline Authorization Act of Nov. 16, 1973, 87 Stat. 579, amending sec. 28 of the Mineral Leasing Act, 30 U.S.C. § 185 (1976), may only be granted pursuant to the provisions of that Act.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

The Secretary may, in computing the fair market value of coal to be leased competitively under privately owned surface, assume a limited surface owner consent cost, based on losses and costs to the surface estate and operation and similar evaluations, regardless of the actual price paid or the amount which a surface owner could otherwise demand for consent.

Assumption of a limited surface owner consent cost to be used in place of actual cost in the computation of fair market value of coal to be leased competitively is necessary to ensure receipt of fair market value by the public as required by 30 U.S.C. § 201(a) (1976).

In the exercise of his discretion to lease under the Mineral Leasing Act, the Secretary has authority to decline to issue a coal lease where surface owner consent costs prevent the public from realizing a fair return on the value of the coal.

Coal Leasing Program -- Relationship of the Cost of Surface Owner Consent to Receipt of Fair Market Value for Federally Owned Coal, M-36909 (Jan. 15, 1979) 86 I.D. 28

Where Bureau of Land Management terminates a sodium lease because lessee failed to submit justification for holding a lease in excess of the acreage limitation, the decision will be set aside upon submission or explanation of failure to provide written information, and the case will be remanded for the State Office to determine whether the information submitted on appeal justifies continued lease tenure.

Olin Corp., 39 IBLA 161 (Jan. 29, 1979)

MINERAL LEASING ACT--Continued

GENERALLY--Continued

Oil and gas leases of Indian lands entered into under the 1938 Mineral Leasing Act (25 U.S.C. §§ 396a-396f (1970)) are not subject to the taxation proviso contained in 25 U.S.C. § 398c (1970).

Tax Status of the Production of Oil and Gas from Jicarilla Apache Tribal Lands Under the 1938 Indian Mineral Leasing Act, M-36896 (Supp.) (Mar. 2, 1979) 86 I.D. 181

BLM may properly readjust a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), within a reasonable time after expiration of its 20-year period with or without notice by BLM to the lessee prior to expiration of the 20-year period.

The failure of BLM to readjust a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), prior to or immediately after expiration of its 20-year period does not constitute a waiver of BLM's right to readjust said lease.

BLM is not estopped to readjust a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), by its failure to readjust said lease prior to or immediately after expiration of its 20-year period.

BLM's readjustment of a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), after expiration of the 20-year lease term does not violate a lessee's rights under the fifth amendment of the United States Constitution.

BLM's readjustment of a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), after expiration of the 20-year term does not violate the Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21(a) (1976), national policy in favor of coal development, and a certain cooperative agreement between the State of Wyoming and the Department of the Interior.

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (May 10, 1979)

The initial terms of any new competitive mineral lease must conform to the statutory minimum production royalty rate then applicable to that type of mineral lease. Competitive and noncompetitive mineral leases for coal, phosphate, potassium, sodium, and oil shale are subject to periodic readjustment of their terms and conditions. Such readjustments must conform to the statutory minimum production royalty rates then applicable.

The lease readjustment process and the sec. 39 royalty reduction process may not be merged into a single process where this would result in a readjusted production royalty rate below the applicable statutory minimum. The sec. 39 determination must be made independently.

In determining whether a permittee is entitled to a preference right lease the Secretary must consider all legal and economic conditions affecting the proposed operation of the lease as of the time of the determination, including the applicable statutory minimum production royalty rate. A preference right lease must provide for a production royalty rate in conformity with the statutory minimum rate applicable at the time of issuance.

Reduction of Production Royalties Below Statutory Minimum Rates, M-36920 (Dec. 11, 1979) 87 I.D. 69 (1980)

MINERAL LEASING ACT--Continued

APPLICABILITY

A silicate will be considered to be a sodium silicate and subject to disposal under the Mineral Leasing Act either where the sodium within the deposit is commercially valuable or where the sodium is essential to the existence of the mineral.

United States v. Union Carbide Corp., 31 IBLA 72 (June 24, 1977) 84 I.D. 309

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977) 84 I.D. 342

CONSENT OF AGENCY

The Mineral Leasing Act of 1920 vests the Department of the Interior with the discretion to lease public lands for oil and gas, including public lands in the national forests. Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing.

Chevron Oil Co., 24 IBLA 159 (Mar. 15, 1976)

ENVIRONMENT

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

Paula J. Jones, 24 IBLA 76 (Feb. 24, 1976)

A decision suspending oil and gas lease applications for public land in a national forest because the Forest Service has not prepared an environmental impact statement on a roadless area will be set aside and the cases remanded for the Bureau of Land Management, in the exercise of its delegated discretion to lease public lands for oil and gas, first to determine whether the Bureau should prepare an environmental impact statement as the lead agency responsible for mineral leasing, and then to act on the offers accordingly.

Chevron Oil Co., 24 IBLA 159 (Mar. 15, 1976)

In exercising the Secretary of the Interior's discretionary authority to lease known sodium deposits under the Mineral Leasing Act, an application to have the lands leased is properly rejected where it appears that the land applied for and surrounding environment near a national recreation area may be more severely damaged than most other sites within the known sodium leasing area, there is local governmental and other opposition

ENVIRONMENT--Continued

to the leasing, and Bureau of Land Management and Forest Service officials recommend preparation of an Environmental Impact Statement for the entire known sodium area before leasing further lands in the area.

Eugene V. Simons, 26 IBLA 208 (Aug. 16, 1976)

It is proper to include environmental protection stipulations in a phosphate lease even though the stipulations apply to privately owned surface lands overlying the federally reserved mineral estate under lease or to privately owned lands used in conjunction with the lease.

Cominco American, Inc., 26 IBLA 329 (Sept. 1, 1976)

LANDS SUBJECT TO

The Mineral Leasing Act of 1920 is not applicable to lands of the Wind River Indian Reservation which were ceded by the Indians to the United States in trust for disposition but were subsequently restored to tribal ownership. Such lands may be leased only under the Act of May 11, 1938, 25 U.S.C. § 396a *et seq.* (1970).

The Mineral Leasing Act of 1920 is not applicable to the ceded but undisposed of lands of the Wind River Indian Reservation. Such lands may be leased only under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Co., 19 IBLA 245 (Mar. 28, 1975)

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

"Other related products." "Other associated deposits." When sodium or potassium brines are covered by leases conveying the exclusive right to mine and dispose of sodium compounds and other related products or potassium compounds and other associated deposits, the leases convey the exclusive rights to all minerals dissolved in the brine, including lithium.

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

LANDS SUBJECT TO--Continued

Oil and gas under a reservoir right-of-way may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.* (1970), but may only be leased to the holder of the right-of-way, his assignee, or to adjacent owners or their lessees in accordance with the Act of May 21, 1930, 30 U.S.C. § 301 (1970); therefore, offers filed under the Mineral Leasing Act for such lands are properly rejected.

Alice Hays, 36 IBLA 313 (Aug. 23, 1978)

Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act, *as amended*, 30 U.S.C. § 181 (1970). If drainage occurs on such lands by reason of wells drilled on adjacent lands, agreements with the owners thereof may be entered into by the Bureau of Land Management pursuant to 43 CFR 3100.3.

Hawthorn Oil Co., 37 IBLA 91 (Sept. 22, 1978)

A prospecting permit which embraces land which is not "unclaimed" and "undeveloped" is a nullity and void as a conveyance of any interest in that land. Land in a mining claim remains "unclaimed" land for the purposes of M-36893 so long as the claim is not validated by discovery of a valuable locatable mineral deposit at the date of permit issuance. Surface disturbing mineral activities, associated with delineation of a mineral ore body which could reasonably be expected to disclose knowledge of an area's coal potential constitute development. The bona fide purchaser provisions of sec. 27(h)(2) of the Mineral Leasing Act do not apply to permits which embrace land that is claimed or developed.

Effect and Implementation of Solicitor's Opinion M-36893 on "Unclaimed, Undeveloped," M-36893 (Supp.) (Nov. 19, 1979)
86 I.D. 627

METHODS OF DEVELOPMENT

The Mineral Leasing Act of 1920, *as amended and supplemented*, most recently by the Coal Leasing Amendments Act of 1975, allows the Secretary to authorize development of coal leases by methods which were not utilized by the industry at the time of passage of the 1920 Act. The broad grants of authority to the Secretary in the 1920 Act allow technological developments in the coal mining industry.

In Situ Gasification of Coal, M-36890 (May 24, 1977)
84 I.D. 244

RENTALS

The Bureau of Land Management is authorized by regulation 43 CFR 3524.1-4(a)(2)(i) to impose a reasonable bonus per acre as a condition to modifying a phosphate lease by adding land to it noncompetitively.

Cominco American, Inc., 26 IBLA 329 (Sept. 1, 1976)

ROYALTIES

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed of under sodium and potassium leases must be imposed on the "gross value of the sodium (or potassium) compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market, and in general, no

MINERAL LEASING ACT--Continued

ROYALTIES--Continued

deductions may be allowed for costs incurred in developing a product to a marketable condition except for the price of reagents which are chemically combined with the product sold from the lease.

The Government is not estopped from collecting royalty payments which are owed, even if it has accepted improper payments in the past.

The statute of limitations for filing claims on behalf of the Government in a Federal court need not be invoked in an administrative adjudicative proceeding to determine royalties due to the United States under mineral leases.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

Sec. 39 of the Mineral Leasing Act authorizes the Secretary to reduce the royalty on coal, oil and gas, oil shale, phosphate, sodium, potassium, and sulphur leases in the interest of conservation whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein.

Sec. 39 of the Mineral Leasing Act authorizes the Secretary to reduce production royalties on coal, oil and gas, phosphate, sodium, potassium, and sulphur leases below the statutory minimum rates established for those minerals.

The Federal Coal Leasing Amendments Act of 1975 left in effect the Secretary's authority under sec. 39 of the Mineral Leasing Act to reduce production royalties on coal leases below the statutory minimum rate.

The initial terms of any new competitive mineral lease must conform to the statutory minimum production royalty rate then applicable to that type of mineral lease. Competitive and noncompetitive mineral leases for coal, phosphate, potassium, sodium, and oil shale are subject to periodic readjustment of their terms and conditions. Such readjustments must conform to the statutory minimum production royalty rates then applicable.

The lease readjustment process and the sec. 39 royalty reduction process may not be merged into a single process where this would result in a readjusted production royalty rate below the applicable statutory minimum. The sec. 39 determination must be made independently.

Reduction of Production Royalties Below Statutory Minimum Rates, M-36920 (Dec. 11, 1979) 87 I.D. 69 (1980)

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

An oil and gas lease offer which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is properly rejected.

Judith Walker, Ginger Lawhon, 18 IBLA 410 (Feb. 10, 1975)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

GENERALLY--Continued

Government mineral leases are subject to the same rules of construction as those applied in interpreting a contract between two private parties.

While a general rule of contract construction provides that when two provisions of a lease conflict, and one is a printed form while the other is a typed or written addendum, the latter provision will be given force and effect over the former, this rule is only relevant where the two provisions cannot be reconciled.

The addition to a standard lease clause, reserving to the Secretary the right to establish reasonable minimum values for minerals mined, of an insertion which spells out how the gross value is to be set does not deprive the Secretary of the reserved right where the application of the added provisions would deprive the United States of any payment for a recoverable associated mineral.

St. Joe Minerals Corp., 20 IBLA 272 (May 15, 1975)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, successfully drawn at a noncompetitive lease simultaneous drawing is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

George B. Isbell, Jr., 20 IBLA 312 (May 30, 1975)

An acquired lands lease offer for land in which the United States owns only a fractional mineral interest is defective and subject to rejection when the applicant fails to accompany his offer with the statement required by the regulations showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror subsequently submits his statement regarding ownership of operating rights prior to a final decision rejecting the offer, the defect may be considered cured with priority of filing as of the time the statement was filed.

John Oakason, Jean Oakason, 21 IBLA 185 (July 28, 1975)

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with certain title information in the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany the offer with the statement required by the regulation showing the extent of ownership of operating rights to the fractional mineral interest not owned by the United States.

Margaret Hughes Hughes, 22 IBLA 146 (Sept. 30, 1975)

Michael Shearn, 24 IBLA 259 (Mar. 29, 1976)

Robert L. Williams, 24 IBLA 311 (Apr. 20, 1976)

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

Beatrice B. Marchand, 26 IBLA 180 (Aug. 9, 1976)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

GENERALLY--Continued

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with reasonable title information in the county recorder's offices as a precondition to lease issuance.

Jean Oakason, 22 IBLA 311 (Nov. 10, 1975)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany the offer with the statement required by 43 CFR 3130.4-4 showing the extent of ownership of operating rights for the fractional mineral interest not owned by the United States.

June Brooks, 25 IBLA 326 (June 30, 1976)

A simultaneous acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interests not owned by the United States, nor can such defect be cured by submitting the information on appeal.

Jelenko Stefanovic, 26 IBLA 229 (Aug. 17, 1976)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, is defective and is properly rejected when the applicant fails to accompany its offer with the statement required by the regulation showing the extent of its ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror submits its statement of operating rights with its appeal, the defect may be considered cured with priority of filing as of that time.

Arkansas Western Gas Co., 27 IBLA 207 (Oct. 6, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Frank O. Wells, 28 IBLA 113 (Nov. 15, 1976)

Susan H. Smith, 28 IBLA 173 (Nov. 24, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Duncan Miller, 29 IBLA 1 (Feb. 7, 1977)

Mary Ann Spear, 31 IBLA 386 (Aug. 16, 1977)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

GENERALLY--Continued

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. When an offeror submits, on appeal, a copy of such statement but the date on the statement differs from the date on the card, and the offeror does not allege he filed the statement simultaneously with the offer, such offer must be rejected for failure to comply with a mandatory regulation.

Duncan Miller, 29 IBLA 83 (Feb. 16, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Oct. 20, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Vernon C. Powell, 30 IBLA 70 (Apr. 18, 1977)

Where noncompetitive acquired lands oil and gas lease offers were allegedly deposited on the cashier's counter in the proper Bureau of Land Management office prior to close of business on a certain day, yet were not discovered by a Bureau employee until 8 a.m. the following day and date-time stamped as filed at 10 a.m. on such day, a protest and petition to amend the filing date of such offers are properly denied where the offeror produces no evidence to support her claim other than her personal affidavit; where no Bureau employee saw the offeror in the Bureau office at the time she claimed to have been there; where no Bureau employee saw the offers on the counter until the following day; and where third-party rights are involved.

Laura J. Spangler, 30 IBLA 265 (May 31, 1977)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Frederick L. Smith, 21 IBLA 239 (Aug. 11, 1975)

Sallie B. Sanford, 24 IBLA 31 (Feb. 17, 1976)

Charles B. Bajek and Frederick L. Smith, 29 IBLA 330 (Mar. 31, 1977)

Geo, Inc., 34 IBLA 27 (Feb. 14, 1978)

Where the agency or Federal instrumentality involved denies its consent to favorable consideration of an application under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1970), the application must be rejected.

Lesco, Inc. (Appellant), Tennessee Valley Authority (Respondent), 23 IBLA 194 (Jan. 6, 1976)

CONSENT OF AGENCY--Continued

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the consent of the Secretary of the Interior is necessary under the Act to the leasing of the land. Where the National Park Service recommends that oil and gas leases for lands within the boundaries of the Chickasaw National Recreation Area be rejected in order to maintain the area for the purposes for which it was established, it is proper to accept this recommendation and reject the offers.

Delphine Shear, David L. Shear, 29 IBLA 33 (Feb. 10, 1977)

Where acquired lands are under the jurisdiction of a bureau of the Department of the Interior, the Secretary is the one whose consent is necessary to the leasing of the land. The Bureau's views, of course, will be considered carefully. Where its views are merely conclusionary, it is proper to remand the case to ascertain the factual basis of such conclusions and whether leasing would be permissible if coupled with appropriate stipulations. The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act. 30 U.S.C. §§ 351-59 (1970).

The Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Walter W. Sapp, 29 IBLA 319 (Mar. 30, 1977)

The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act, 30 U.S.C. §§ 351-59 (1970). Where acquired lands are under the jurisdiction of a Bureau of the Department of the Interior, it is the Secretary's consent which is necessary to the leasing of land. The Bureau's views will be given careful consideration. However, where such views are merely conclusional, it is proper to remand the case to ascertain the factual basis for such conclusions and to determine whether leasing may be permissible if coupled with appropriate stipulations.

Shell Oil Co., 30 IBLA 187 (May 19, 1977)

Kent E. Peterson, 30 IBLA 199 (May 20, 1977)

A recommendation by the Bureau of Reclamation that issuing oil and gas leases on acquired land under its administration would jeopardize further acquisitions, should be given careful consideration, but the Bureau of Land Management must independently evaluate whether issuing the leases would be in the public interest.

An independent evaluation of whether the issuance of oil and gas leases on acquired lands would be in the public interest need, in some cases, consist only of an examination of the general character of the land. Where, however, the offeror raises material factual questions, these must be considered.

Harris B. Pender, 33 IBLA 216 (Dec. 22, 1977)

CONSENT OF AGENCY--Continued

The Bureau of Land Management must reject a noncompetitive oil and gas lease offer for acquired lands under the jurisdiction of the Department of the Air Force where the latter agency withholds its consent from the issuance of a lease.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

Where acquired lands are under the jurisdiction of the Bureau of Reclamation, its opinion as to the desirability of issuing an oil and gas lease under the Mineral Leasing Act for Acquired Lands is not controlling, although its views will be considered carefully. Rather, it is up to the Bureau of Land Management to assemble information and to determine on the Department's behalf whether such a lease may be issued.

Andrew E. Bartley, 35 IBLA 137 (May 22, 1978)

LANDS SUBJECT TO

An offer for an oil and gas lease under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

Shell Oil Co., 20 IBLA 292 (May 27, 1975)

Lands or mineral interests acquired by purchase by the Tennessee Valley Authority for the development of mineral resources are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Leeco, Inc. (Appellant), Tennessee Valley Authority (Respondent), 23 IBLA 194 (Jan. 6, 1976)

Because the Mineral Leasing Act for Acquired Lands specifically excludes the leasing of land located within an incorporated city, town, or village, a noncompetitive oil and gas lease offer for acquired land within the boundaries of such a city, town, or village is properly rejected.

James L. Santy, 25 IBLA 390 (July 6, 1976)

An oil and gas lease offer made pursuant to the Mineral Leasing Act for Acquired Lands is properly rejected where the subject lands are not acquired lands but, rather, are patented with a reservation of mineral rights in the United States.

John C. Clay, 28 IBLA 353 (Jan. 24, 1977)

Lands acquired for military purposes and subsequently disposed of as surplus property under the Federal Property and Administrative Services Act with a reservation of mineral rights to the United States are not subject to leasing under the Mineral Leasing Act for Acquired Lands. Oil and gas leases on such land may issue only under the provisions of the Federal Property and Administrative Services Act, which requires competitive bidding.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

LANDS SUBJECT TO--Continued

The Mineral Leasing Act for Acquired Lands does not exclude from oil and gas leasing those lands underlying the Missouri River within the boundaries of the Fort Berthold Indian Reservation as established by the Treaty of Fort Laramie (1851) and the Executive Order of Apr. 12, 1870, which were reacquired by the United States from the Indian tribes. The exclusion in the Act for submerged lands refers to submerged *coastal* lands, as set forth in 43 CFR 3101.2-1(g).

Impel Energy Corp., 42 IBLA 105 (Aug. 16, 1979)

Lands which were acquired for development of their uranium deposits are not subject to oil and gas leasing under the Mineral Leasing Act for Acquired Lands.

Esdras K. Hartley, 44 IBLA 66 (Nov. 20, 1979)

MINERALS EXPLORATION

(*See also* Defense Minerals Exploration--if included in this Index.)

Where application is made to lease reserved minerals in lands patented to the State of California for park or other public purposes, the regulations do not require the discovery of a workable deposit of mineral of commercial quantity and quality as a pre-condition to the issuance of the lease. Indeed, a lease affords the only authority for the conduct of exploratory operations.

George W. Wright, Sr. (Deceased), 22 IBLA 280 (Oct. 30, 1975)

Where the declared administrative policy is to refuse permission for geophysical exploration on lands controlled by sec. 17(d)(1) of the Alaska Native Claims Settlement Act and the subject lands are under consideration for possible inclusion in the national forest system, a decision refusing such permission will be affirmed.

Shell Oil Co., 28 IBLA 378 (Feb. 4, 1977)

An application for permit to drill for oil and gas in a designated Potash Area is properly denied where the applicant fails to show that his application comes within either of the two exceptions to the policy in favor of potash development enunciated in an Order of the Secretary, dated Oct. 7, 1975, 40 FR 51486.

Belco Petroleum Corp., 42 IBLA 150 (Aug. 16, 1979)

MINES AND MINING

The Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a (1970), does not require the granting of permission for placer mining operations on land within a powersite withdrawal where such operations would probably interfere with other uses of the land.

United States v. Edward J. Connolly, Jr., Idaho Fish and Game Department (Intervenor), 40 IBLA 30 (Mar. 15, 1979)

MINING CLAIMS

(*See also* Multiple Mineral Development Act, Surface Resources Act--if included in this Index.)

GENERALLY

When one whose application for patent for a mining claim has been rejected requests a hearing to present evidence on the controlling issues of fact involved in the rejection of the application, such request must be granted.

If mining claimants possess the essential qualifications as to citizenship, and if they peacefully entered and occupied the land and discovered a valuable mineral deposit thereon at a time when both the land and the mineral were subject to appropriation under the mining laws, and if they thereafter remained in peaceful, exclusive possession and openly worked the claim for the period prescribed by the State statute of limitations for mining claims, and expended at least the minimum amount of money prescribed by law in the improvement of the claim, they have thereby established their right to receive a patent pursuant to 30 U.S.C. § 38 (1970) notwithstanding their error in locating and recording their claim under the statute pertaining to placer locations rather than properly under the lode mining law, assuming that there has been no intervening loss of discovery.

Estate of Arthur C. W. Bowen (Deceased), 18 IBLA 375 (Jan. 30, 1975)

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated and the rights of the public preserved.

Richard E. and Shirley A. Jarrett, 19 IBLA 78 (Feb. 27, 1975)

The authority of the Government to proceed with the determination of the validity of a mining claim is not barred by laches, because Government property is not to be disposed of contrary to law, despite any acquiescence, laches, or failure to act on the part of its officer or agents.

Montana Copper King Mining Co., et al., 20 IBLA 30 (Apr. 16, 1975)

The Department of the Interior has the right to contest the validity of an unpatented mining claim at any time until patent issues.

A judgment is not conclusive of a fact erroneously assumed when the fact was not actually litigated and determination thereof was not essential to the decision.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

Where a contestee makes a timely response to a Government complaint in a mining contest, which can reasonably be construed as a general denial of the allegations contained in the complaint, the response will be considered a sufficient answer within the contemplation of the regulations. The allegations then cannot be taken as admitted and the mining claim declared null and void without a hearing.

United States v. Cliff Libby, 24 IBLA 39 (Feb. 19, 1976)

MINING CLAIMS--Continued

GENERALLY--Continued

A mining claim is a claim to property which may not be declared invalid without proper notice and an adequate opportunity for an agency hearing in accordance with due process of law. That due process consists of notice and opportunity for hearing and it suffices if the claimant is afforded the opportunity to be present and heard. The fact that the claimant, after filing a timely answer to the contest complaint, refused to attend that hearing and produce evidence does not vitiate the due process he has received.

United States v. Carl Bellamy. 25 IBLA 50 (May 14, 1976)

When title to an entire in-place school section has passed to the State, the United States no longer has a property interest therein and the land is no longer subject to location under the mining laws.

J. P. Hinds et al., 25 IBLA 67 (June 1, 1976)
83 I.D. 275

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. This withdrawal does not extend to minerals in lands near tributaries of designated rivers unless the tributaries were expressly included.

Walter B. Freeman et al., 25 IBLA 150 (June 10, 1976)

Water is not a mineral which is locatable under the general mining law.

The bottling and distribution for sale of spring water for human consumption does not constitute the mining of a valuable mineral deposit under the general mining law.

Robert L. Beery et al., 25 IBLA 287 (June 28, 1976)
83 I.D. 249

The Department of the Interior may contest the validity of any unpatented mining claims located on public land, including claims located within powersite withdrawals; the Department's authority to contest the validity of mining claims was not diminished by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Houglum, 26 IBLA 249
(Aug. 18, 1976)

A petition for deferment of assessment work may only be granted pursuant to 43 CFR 3852.1, where "legal impediments" exist which affect the right of a mining claimant to enter upon the surface of a claim or group of claims. That there has been no administrative determination of the validity of the claims, possible trespass actions are threatened, and there is a Federal court suit pending concerning the claims, do not constitute "legal impediments" within the ambit of the Act of June 21, 1949, 30 U.S.C. § 28b-e (1970), and a petition for deferment of assessment work will be denied.

Portland General Electric Co., L. C. Cortright, 29 IBLA
165 (Mar. 9, 1977)

MINING CLAIMS--Continued

GENERALLY--Continued

The notation on public records of the Bureau of Land Management of a request for withdrawal has a segregative effect on land included in a mining location, so that in a contest proceeding, the claimants must show that they had made a discovery of a valuable mineral deposit before the time of posting of the withdrawal application.

United States v. John L. Maley and James E. Engel.
29 IBLA 201 (Mar. 22, 1977)

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be a common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

"Common Clay." A "common clay" not locatable under the mining laws does not include clay having exceptional qualities which meets refractory and other quality standards for highgrade ceramic products or other products requiring a high refractoriness, or which is useful for certain industrial uses, such as in the oil and oil well drilling industries, outside the manufacture of general clay products. It does include, however, clay usable or used only for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, and for pottery and ordinary earthenware and stoneware. The fact industrial and technological changes may make a certain clay deposit valuable for a given major manufacturer of brick, tile and other clay products, because it meets its peculiar specifications for blends with other raw materials, does not warrant a change from Departmental precedents and a strong Congressional policy establishing that clay usable only for such purposes is a common clay not locatable under the mining laws.

United States v. Thomas J. Peck et al., 29 IBLA 357
(Mar. 31, 1977)
84 I.D. 137

Where a mining claim is located on lands at a time when the official records of the Bureau of Land Management showed such lands to be subject to a proposed withdrawal from operation of the mining laws, that mining claim is null and void ab initio.

Jack E. Cance et al., 30 IBLA 112 (May 2, 1977)

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976, has not been filed within 90 days from the date of location is void, and the Department may not accept or give force to a notice of recordation filed after the 90-day period.

Effect of Failure to Record Timely Under Sec. 314(b), Federal Land Policy and Management Act of 1976, M-36889
(May 17, 1977)
84 I.D. 188

The Bureau of Land Management, in exercise of its authority to regulate the acquisition of rights in the public lands, may contest any unpatented mining claim located on public land under its jurisdiction to determine, among other things, if the claimant has discovered on his mining claim a valuable mineral deposit as required by 30 U.S.C. § 22 (1970).

United States v. Gwendolyn McClurg et al., 31 IBLA 8
(June 15, 1977)

MINING CLAIMS--Continued

GENERALLY--Continued

Government witnesses in a contest proceeding who are qualified by education and experience are competent to testify as experts with reference to the prudent man rule.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

A petition for deferment of annual assessment work will not be granted where a claimant alleges only that the claims in question are the subject of litigation and that it would be unwise to engage in any development until a resolution of that litigation is reached.

Charlestone Stone Products, Inc., 32 IBLA 22 (Aug. 30, 1977)

A locator of a mining claim on public land has taken only the initial step in seeking to secure a gratuity from the Government and obtains no rights against the United States until there has been a discovery of a valuable mineral deposit within the limits of the claim.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

Land is segregated from entry under the mining laws when a proposed withdrawal of the lands from mineral entry is noted on the official records of the Bureau of Land Management and a mining claim located after that time is null and void ab initio.

The segregative effect of an application by a Federal agency for withdrawal of land from mineral entry is not affected by the provision in the published proposal that further hearings and investigations may be held.

The authority of the Government to proceed with the withdrawal of public lands, after a Federal agency has filed an application for such action, which withdraws that land from mineral location, will not be barred by laches because of lapse of time.

William J. Smith, Sr., et al., 33 IBLA 47 (Nov. 25, 1977)

The Bureau of Land Management may require maps of mining claims meeting the requirements of 43 CFR 3833.1-2(c)(7) before accepting the recordation of the claims under 43 U.S.C.A. § 1744 (West Supp. 1977).

Paul S. Coupey, 33 IBLA 178 (Dec. 20, 1977)

Where a corporation allegedly acquired a group of unpatented mining claims, but the instruments of conveyance and the abstract of title are subject to various objections by the Government's title examiner, which the corporation finds are difficult or impossible to cure, the corporation nonetheless may receive a patent to the claims pursuant to the Act of July 9, 1870 (R.S. § 2332; 30 U.S.C. § 38 (1970)), by demonstrating its qualifications under that Act.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977)
84 I.D. 990

MINING CLAIMS--Continued

GENERALLY--Continued

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744) has not been filed within 90 days from the date of location is void, and no force and effect can be given to a notice of recordation filed after the 90-day period.

Southwestern Exploration Associates, 33 IBLA 240 (Dec. 28, 1977)

The purpose of an amended location is to cure imperfections and correct errors, which in the absence of intervening rights relates back to the date of original location. An amended location made while land is withdrawn from mineral entry is ineffectual.

Ray L. Virgin, 33 IBLA 354 (Jan. 18, 1978)

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved.

A mining claimant must comply both with Federal law and with such State requirements as are not inconsistent with Federal mining provisions.

In order for a mining claimant to maintain a possessory right in a claim under Arizona law, the locator must file within 90 days a copy of the location notice in the county in which the claim is located.

The United States and a city which has filed an application to purchase land pursuant to the Recreation and Public Purposes Act are adverse claimants who may take advantage of the failure of a mining claimant to perform annual assessment.

A classification of the lands under the Recreation and Public Purposes Act, 43 U.S.C. § 869 (1970), *as amended*, segregates the land from all other forms of appropriation under the public land laws including the mining laws when the classification is noted on the Bureau of Land Management State Office records.

Under Arizona law a failure to perform the tasks enunciated in 27 ARS 203 within the specified time will be deemed to be an abandonment of a mining claim.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

"Subject to valid existing rights." The Secretary of the Interior in making withdrawals "subject to valid existing rights" in PLO 5179 and PLO 5250 intended exceptions to withdrawal to apply in behalf of only those claimants who themselves held such valid rights at time of withdrawal. The Secretary did not intend existence of another's valid rights on withdrawal date to restrain withdrawal so as to allow a topfiling claimant to enter pertinent lands after withdrawal date and independently establish rights under mining laws.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. Land within one-quarter mile of the bank of the Illinois River, Oregon, a river designated in sec.

MINING CLAIMS--Continued

GENERALLY--Continued

5(a) of the Act as a potential addition to the system, is withdrawn from mineral entry and therefore, not available for mining claims.

The location of a mining claim simply to maintain a road and insure access to other claims beyond is not a legitimate purpose within the scope or intention of the general mining law.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

A mining claim is properly declared null and void ab initio where the land on which it is located was segregated by a formal forest exchange application, which withdrew the selected public lands from location under the mining laws prior to the time that the mineral location was made.

Charles A. Morrison, 36 IBLA 372 (Aug. 31, 1978)

Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the United States' mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio.

Federal-American Partners, 37 IBLA 330 (Oct. 26, 1978)

Unless the statute creating the area specifically provides otherwise, areas within the National Park system are not open for location of mining claims.

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

Pursuant to 43 CFR 2091.2-5, an application for withdrawal temporarily precludes entry on the land in derogation thereof, from the time the application is noted on the records until revocation thereof is also noted on the records, and such withdrawal is not deemed to have expired despite the fact that the withdrawal application was noted on the records 7 years prior to location of the mining claim.

A mining claim located in part on land withdrawn for a utility corridor and segregated from mineral entry is null and void ab initio as to such land.

Earl D. Woody, Winton E. White, 38 IBLA 385 (Dec. 29, 1978)

Where it is determined that a person or association, they and their grantors, have met the fundamental requirements of the possessory rights section of the mining laws, 30 U.S.C. § 38 (1976), i.e., where they have held and worked their claims in this instance for the qualifying period of 5 years under the Arizona statute of limitations covering actions to recover real property, they are entitled to a patent to those areas where there are no conflicting mining claims, regardless of the fact that the claims were improperly located as placer claims for perlite lode deposits.

United States v. Estate of Arthur C. W. Bowen (Deceased), and Superior Perlite Mines, Inc. (Contestees), Harborlite Corp. (Intervenor), 38 IBLA 390 (Jan. 8, 1979)

MINING CLAIMS--Continued

GENERALLY--Continued

A petition for deferment of assessment work may only be granted pursuant to 43 CFR 3852.1, where "legal impediments" exist which affect the right of a mining claimant to enter upon the surface of a claim or group of claims. Pending litigation, which does not, in and of itself, preclude access to the mining claims does not constitute "legal impediments" within the ambit of the Act of June 21, 1949, 30 U.S.C. § 28b (1976), and a petition for deferment of assessment work will be denied.

A mining claimant petitioning for temporary deferment of annual assessment work is required by 43 CFR 3852.2(a) to file the petition in duplicate, and to attach a copy of notice to the public to one copy of the petition. The copy of the public notice must show on its face that it has been duly filed or recorded. Failure to meet this requirement will cause the petition to be denied.

Don Hesselgesser, 39 IBLA 75 (Jan. 24, 1979)

Designation of a river for potential addition to the national wild and scenic rivers system, pursuant to the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. § 1271 et seq. (1976), withdraws Federal lands constituting the bed or bank or within one-quarter mile of the bank of such river from all forms of appropriation under the mining laws, and on appeal the mining claimant bears the burden of showing by survey or other evidence that his claim is outside the withdrawn area.

Barry C. Binning, 39 IBLA 390 (Feb. 28, 1979)

Lands segregated on the public records by a proposed withdrawal posted Apr. 6, 1973, or a Recreational and Public Purposes Classification filed Nov. 13, 1956, were not available for the location of mining claims, and claims thereafter located are null and void ab initio.

"Contest." A decision declaring claims located on withdrawn lands to be null and void ab initio is not a "contest" and regulations under 43 CFR 4.451 et seq., relating to mining contests, have no application.

Delmer McLean et al., 40 IBLA 34 (Mar. 15, 1979)

Sec. 314 of the Federal Land Policy and Management Act of 1976 was enacted to establish a Federal recording system for mining claims to facilitate Federal land use planning and management. Failure to comply with the mandatory filing requirements constitutes abandonment of the claim and the land reverts to the status of public domain.

In the absence of a specific regulation or policy directive specifying the type of proof necessary for recordation, the Bureau of Land Management should literally consider attempts by a mining claimant under sec. 314 of the Federal Land and Policy Management Act to record notice of a mining claim where proof of recording cannot be made and 30 U.S.C. § 38 (1976) is relied upon for holding the claim, and before rejecting a filing for such a claim, BLM should request further evidence from the claimant which it would consider satisfactory. Such evidence should include at a minimum the name the claim is and has been known by, the name and address of the claimant, an adequate description of the claim, the type of claim, the time of holding and working the claim to meet a State's statute of limitations and, if possible, the date of the origin of claimant's title and facts as to continuation of possession of the claim, and any other information available showing a chain of title to the claimant and bearing upon the possession and occupancy of the claim for mining purposes, and other information which the Bureau of Land Management deems essential to meet the purposes of the recordation provision.

Philip Sayer, 42 IBLA 296 (Aug. 27, 1979)

Pursuant to 43 U.S.C. § 1712(e)(3) (1976), a wholly owned Government corporation may acquire and hold rights as a citizen under the Mining Law of 1872.

John B. Meadows, 43 IBLA 35 (Sept. 12, 1979)

It is a cardinal principle of mining law that mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineral might be found to justify mining development does not constitute a valuable mineral deposit.

United States v. Edward T. McHenry et al., 43 IBLA 122 (Sept. 26, 1979)

For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location. To the extent, however, that an amended location merely furthers rights acquired by a valid subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights will not prevent the amended location from relating back to the original location.

Since an amended notice merges with the original notice, the filing of the amended notice, for purposes of recordation under either sec. 8 of the Mining in the Parks Act, 90 Stat. 1342, 1343, 16 U.S.C. § 1907 (1976), or sec. 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 2769, 43 U.S.C. § 1744 (1976), together with such other information required by the applicable regulations, constitutes compliance with the recording requirements of those Acts.

Except for claims held under 30 U.S.C. § 38 (1976), a failure to record a mining claim as required by State law, coupled with a withdrawal of the land prior to any curative action, invalidates the claim, and thus precludes subsequent amendment of the claim.

An oral transfer of a mining claim, though contrary to the statute of frauds, will not serve to invalidate the claim, and a person subsequently seeking to record the claim will be afforded the opportunity to prove that the transfer actually occurred.

Where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. Gail Tibbetts et al., 43 IBLA 210 (Oct. 5, 1979)
86 I.D. 538

The Department of the Interior has the right to contest the validity of an unpatented mining claim at any time until patent issues.

United States v. J. D. Wilson, 44 IBLA 1 (Nov. 6, 1979)

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Where there are factual questions relating to whether refilings subsequent to a withdrawal were in the nature of an "amended locations" or whether they constituted "relocations," the matter must be referred for a hearing to allow the claimant the opportunity to show that subsequent filings have been amended locations, and that it is thus the successor in an unbroken chain of title dating back to the original location.

American Resources, Ltd., 44 IBLA 220 (Dec. 11, 1979)

ABANDONMENT

Under Arizona law a failure to perform the tasks enunciated in 27 ARS 203 within the specified time will be deemed to be an abandonment of a mining claim.

H. E. Webb, 34 IBLA 362 (May 1, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

W. A. Starr and Ida Elsie Potiller, 38 IBLA 74 (Nov. 9, 1978)

Under 43 CFR 3833.2-1(b), the owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned, under 43 CFR 3833.4(a).

John R. Carruthers, 38 IBLA 77 (Nov. 9, 1978)

Under 43 CFR 3833.2-1(b), the owner of unpatented mining claims located after Oct. 21, 1976, in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims prior to Dec. 31 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Blackburn Enterprises, 41 IBLA 115 (June 11, 1979)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which he recorded the claim in the BLM office, his claim is properly deemed conclusively to have been abandoned.

Charles and Pete Caress, 41 IBLA 302 (June 29, 1979)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Under the Federal Land Policy and Management Act of 1976, sec. 314, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Oct. 10, 1977, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned.

Bruce Parke, 42 IBLA 18 (July 25, 1979)

The owner of an unpatented mining claim relocated before Oct. 21, 1976, has until Oct. 21, 1979, in which to record his notice of location with BLM. However, if he elects to record in 1977, he must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following year, 1978, and each year thereafter, or the claim will be conclusively deemed to have been abandoned.

William L. Rucinski, 42 IBLA 56 (Aug. 1, 1979)

Under 43 CFR 3833.2-1(a), the owner of unpatented mining claims located before Oct. 21, 1976, in the calendar year 1978, and recorded with the Bureau of Land Management (BLM) in 1977, must file affidavits of assessment work or notices of intention to hold the mining claims prior to Dec. 31 of each calendar year after recording, or the claims will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Clair B. Caldwell et al., 42 IBLA 139 (Aug. 16, 1979)

Under 43 CFR 3833.2-1, the owner of two unpatented mining claims, one located Sept. 16, 1976, and recorded with BLM May 3, 1977, and one located Feb. 1, 1977, and recorded with BLM Feb. 17, 1977, must have filed affidavits of assessment work or notices of intention to hold the mining claims for both claims prior to Dec. 31 of the calendar year, 1978, to prevent the claims from being conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Where, on appeal, a mining claimant alleges that he timely mailed the affidavits of assessment work to the proper BLM office but there is no evidence to indicate they were ever received, the claimant must bear the consequences of the loss and his inability to prove his allegation that they may have been received by the Bureau and subsequently lost.

Amanda Mining & Manufacturing Ass'n., 42 IBLA 144 (Aug. 16, 1979)

Under the Federal Land Policy and Management Act of 1976, § 314, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claims located in 1977 must file an affidavit of assessment work or a notice of intention to hold the claim prior to Dec. 31 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned. Where an appellant asserts on appeal that he timely mailed proof of labor to the Bureau of Land Management, but the documents were not received by that office, the documents cannot be considered as filed with that office unless and until they are received by it.

John Newkirk et al., 42 IBLA 292 (Aug. 27, 1979)

James E. Yates, 42 IBLA 391 (Sept. 11, 1979)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Sec. 314 of the Federal Land Policy and Management Act of 1976 was enacted to establish a Federal recording system for mining claims to facilitate Federal land use planning and management. Failure to comply with the mandatory filing requirements constitutes abandonment of the claim and the land reverts to the status of public domain.

Philip Sayer, 42 IBLA 296 (Aug. 27, 1979)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which he recorded the claim in the BLM office, his claim is properly deemed conclusively to have been abandoned and to be null and void.

A State law which requires filing of proof of assessment work which requirement is more liberal than the recordation requirement of the Federal Land Policy and Management Act of 1976, § 314a, 43 U.S.C. § 1744 (1976), cannot override the more onerous requirements of the latter, since Article VI, Clause 2 of the Federal Constitution makes the Constitution, and laws and treaties made in conformity therewith, the supreme law of the land.

James V. Joyce, 42 IBLA 383 (Sept. 11, 1979)

Under the Federal Land Policy and Management Act of 1976, sec. 314, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claims located in 1977 must file affidavits of assessment work or notices of intention to hold the claims prior to Dec. 31 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned, and may properly be declared void.

Ernest K. Lehmann and Associates, 43 IBLA 1 (Sept. 11, 1979)

Under 43 U.S.C. § 1744(a) (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned. Sec. 1744(a) does not conflict with 30 U.S.C. § 28 (1976) which pertains to the year in which the first affidavit of assessment work must be recorded.

Charlie Carnal, Walter Beck, and Edward Borzanski, 43 IBLA 10 (Sept. 11, 1979)

Under 43 CFR 3833.2-1 the owner of unpatented mining claims located after Oct. 21, 1976, and recorded with the Bureau of Land Management in Nov. 1977, must have filed affidavits of assessment work or notices of intention to hold the mining claims prior to Dec. 31, 1978, to prevent the claims from being conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Where, on appeal, a mining claimant alleges that he timely mailed the affidavits of assessment work to the proper BLM office but there is no evidence to indicate they were ever received, the claimant must bear the consequences of the loss and his inability to prove his allegation that they may have been received by the Bureau and subsequently lost.

Roger Kuhn, 43 IBLA 182 (Sept. 28, 1979)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Under 43 CFR 3833.2-1(c), the owner of unpatented mining claims located after Oct. 21, 1976, in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the miing claims on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Where a claimant is not required to do any assessment work under the general mining laws, but is nevertheless required to file under 43 CFR 3833.1-2(c), he must file a notice of intention to hold the claims in lieu of an affidavit of assessment work performed.

Silvertip Exploration & Mining, 43 IBLA 250 (Oct. 10, (1979)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a), the owners of unpatented mining claims located before Oct. 21, 1976, and recorded with BLM in 1977, must file affidavits of assessment work or notices of intention to hold the mining claims prior to Dec. 31 of each calendar year following the calendar year of recording, or the claims will be conclusively deemed to have been abandoned under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. Mining claimants are not relieved of the requirement to timely file their documents when they mistakenly mailed them to the wrong city, as the documents cannot be considered as filed until they are received by the proper office of the Bureau of Land Management.

Dennis J. Mertz and Sandy Mack, 43 IBLA 302 (Oct. 17, 1979)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the year in which the claim was located or the claim will be conclusively deemed to have been abandoned.

Lester L. Rhoads, 43 IBLA 380 (Oct. 31, 1979)

Unpatented mining claims are properly deemed to have been abandoned and declared void where a claimant fails to comply with the requirements of the recording law by showing that a copy of the claimant's notice of intention to hold the claim (where an affidavit of assessment work is not filed), was filed in the local jurisdiction's office where notices of the location of the claims are recorded.

R. B. Wadleigh, 44 IBLA 11 (Nov. 6, 1979)

Decisions by BLM declaring mining claims abandoned and void for failure to file timely annual notices of intention to hold the claims or affidavits of assessment work will be vacated, notwithstanding the fact that BLM's records contain no such documents marked as timely filed, where the claimant is able to show that he mailed such documents to BLM and that it received them timely, and where it does not appear unlikely that BLM misplaced the documents or misconstrued their contents, owing to the absence of a numbering system and the similarity of the names of the claims to others.

Under 43 CFR 3833.2-1(a) and 3833.4(a), the owner of an unpatented mining claim located before Oct. 21, 1976, notice of which is recorded with BLM in the calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the claim on or before Dec. 30 of the following calendar year, 1978, or the

claim will be conclusively deemed to have been abandoned.

E. Joe Swisher, 44 IBLA 44 (Nov. 19, 1979)

A copy of a recorded instrument which includes all of the information required by statute and regulation for the Federal recordation of mining claims and which is timely filed in the proper BLM office will be deemed sufficient to avert the conclusive presumption that the claims are abandoned and void, notwithstanding that the instrument is styled "Affidavit of Discovery," rather than "Notice" or "Certificate" of location.

William E. Moore, 44 IBLA 93 (Nov. 20, 1979)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year or the claim will be conclusively deemed to have been abandoned.

William A. Perry, 44 IBLA 162 (Nov. 30, 1979)

ASSAYS

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Bukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give the appropriate weight according to the circumstances surrounding the specific report. However, it is not improper to exclude an assay report where neither the assayer nor the sample-taker testifies concerning its origins, and no other foundation is laid for its introduction.

United States v. John E. Fort et al., 43 IBLA 363 (Oct. 29, 1979)

ASSESSMENT WORK

An appeal from a decision denying a petition for deferment of annual assessment work on mining claims will be dismissed where the petitioner files evidence with its appeal showing that the assessment work was subsequently performed.

Hibernia Silver Mines, Inc., 20 IBLA 12 (Apr. 14, 1975)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

A petition for deferment of assessment work may only be granted pursuant to 43 CFR 3852.1, where "legal impediments" exist which affect the right of a mining claimant to enter upon the surface of a claim or group of claims. That there has been no administrative determination of the validity of the claims, possible trespass actions are threatened, and there is a Federal court suit pending concerning the claims, do not constitute "legal impediments" within the ambit of the Act of June 21, 1949, 30 U.S.C. § 28b-e (1970), and a petition for deferment of assessment work will be denied.

Portland General Electric Co., L. C. Cortright, 29 IBLA 165 (Mar. 9, 1977)

A petition for deferment of annual assessment work will not be granted where a claimant alleges only that the claims in question are the subject of litigation and that it would be unwise to engage in any development until a resolution of that litigation is reached.

Charlestone Stone Products, Inc., 32 IBLA 22 (Aug. 30, 1977)

Since a "legal impediment" which would justify the granting of a deferment to perform annual assessment work is only one which interdicts the mining claimant from access to the claim, the fact that the mining claimant is involved in a pending proceeding seeking an arrangement under Chapter XI of the Bankruptcy Act does not constitute such an impediment. While this circumstance may prevent the claimant from expending his assets to perform assessment work, it does not restrict his access to the claim.

Oliver Reese, 34 IBLA 103 (Feb. 27, 1978)

In order for a mining claimant to maintain a possessory right in a claim under Arizona law, the locator must file within 90 days a copy of the location notice in the county in which the claim is located.

The United States and a city which has filed an application to purchase land pursuant to the Recreation and Public Purposes Act are adverse claimants who may take advantage of the failure of a mining claimant to perform annual assessment.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h), not the date on which the owner completes the last step in locating and recording a mining claim as required by State law.

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

The holding of a mining claim and the diligent pursuance of mining activities on it does not relieve its owner of the obligation imposed by statute to file an affidavit of assessment work or a notice of intention to hold a mining claim.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

In order for a mining claimant to qualify for deferment of his annual assessment work under 30 U.S.C. § 28b (1970), his access to his mining claims must be interdicted. The mere fact the mining claims are involved in litigation over possessory rights does not justify granting a deferment of annual assessment work.

John W. MacGuire, 35 IBLA 117 (May 15, 1978)

A "legal impediment" which would justify the granting of a deferment to perform annual assessment work is only one which interdicts the mining claimant from access to the claim. Where there is no indication in the record that the claimant prior to the decision appealed from has attempted to make satisfactory arrangements with the surface owners covering possible surface damage or has negotiated with such owners concerning his access, his access has not been interdicted and the petition for deferment was properly denied.

A. J. Maurer, Jr., 36 IBLA 4 (June 27, 1978)

Although pending litigation with respect to ownership of mining claims does not in itself establish grounds for deferment of assessment work thereon, a court injunction against entry upon the claims by the locator constitutes a "legal impediment" to entry which will support a deferment.

Continental Oil Co., 36 IBLA 65 (June 30, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h).

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

W. A. Starr and Ida Elsie Rotiller, 38 IBLA 74 (Nov. 9, 1978)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Under 43 CFR 3833.2-1(b), the owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned, under 43 CFR 3833.4(a).

John R. Carruthers, 38 IBLA 77 (Nov. 9, 1978)

Under sec. 2 of the Act of June 21, 1949, 30 U.S.C. § 28c (1976), deferment of annual assessment work for mining claims may only be granted for 2 years, and a petition for deferment beyond the authorized 2-year period is properly denied.

The Dredge Corp., 38 IBLA 178 (Dec. 6, 1978)

John S. Herr, 40 IBLA 158 (Mar. 30, 1979)

A petition for deferment of assessment work may only be granted pursuant to 43 CFR 3852.1, where "legal impediments" exist which affect the right of a mining claimant to enter upon the surface of a claim or group of claims. Pending litigation, which does not, in and of itself, preclude access to the mining claims does not constitute "legal impediments" within the ambit of the Act of June 21, 1949, 30 U.S.C. § 28b (1976), and a petition for deferment of assessment work will be denied.

A mining claimant petitioning for temporary deferment of annual assessment work is required by 43 CFR 3852.2(a) to file the petition in duplicate, and to attach a copy of notice to the public to one copy of the petition. The copy of the public notice must show on its face that it has been duly filed or recorded. Failure to meet this requirement will cause the petition to be denied.

Don Hesselgesser, 39 IBLA 75 (Jan. 24, 1979)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located after Oct. 21, 1976, is not supported annually by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement there was no intent to abandon and that failure to file was an oversight.

Nuclear Power and Energy Co. and E-2, Inc., 41 IBLA 142 (June 14, 1979)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which he recorded the claim in the BLM office, his claim is properly deemed conclusively to have been abandoned.

Charles and Pete Caress, 41 IBLA 302 (June 29, 1979)

A provision of State law, relating to assessment work on mining claims, which is more liberal than the requirements of Federal law, cannot override such Federal law. Article IV, § 3, cl. 2, of the Federal Constitution

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

vests in the Congress authority to promulgate appropriate laws governing the public lands and other property of the United States.

Under the Federal Land Policy and Management Act of 1976, sec. 314, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Oct. 10, 1977, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned.

Bruce Parks, 42 IBLA 18 (July 25, 1979)

Under the Federal Land Policy and Management Act of 1976, § 314, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claims located in 1977 must file an affidavit of assessment work or a notice of intention to hold the claim prior to Dec. 31 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned. Where an appellant asserts on appeal that he timely mailed proof of labor to the Bureau of Land Management, but the documents were not received by that office, the documents cannot be considered as filed with that office unless and until they are received by it.

John Newkirk et al., 42 IBLA 292 (Aug. 27, 1979)

James E. Yates, 42 IBLA 391 (Sept. 11, 1979)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which he recorded the claim in the BLM office, his claim is properly deemed conclusively to have been abandoned and to be null and void.

A State law which requires filing of proof of assessment work which requirement is more liberal than the recordation requirement of the Federal Land Policy and Management Act of 1976, § 314a, 43 U.S.C. § 1744 (1976), cannot override the more onerous requirements of the latter, since Article VI, Clause 2 of the Federal Constitution makes the Constitution, and laws and treaties made in conformity therewith, the supreme law of the land.

James V. Joyce, 42 IBLA 383 (Sept. 11, 1979)

Under the Federal Land Policy and Management Act of 1976, sec. 314, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claims located in 1977 must file affidavits of assessment work or notices of intention to hold the claims prior to Dec. 31 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned, and may properly be declared void.

Ernest K. Lehmann and Associates, 43 IBLA 1 (Sept. 11, 1979)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location of the claim is the date as defined in 43 CFR 3833.0-5(h).

Under 43 U.S.C. § 1744(a) (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned. Sec. 1744(a) does not conflict

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

with 30 U.S.C. § 28 (1976) which pertains to the year in which the first affidavit of assessment work must be recorded.

Charlie Carnal, Walter Peck, and Edward Borzansky, 43 IBLA 10 (Sept. 11, 1979)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the year in which the claim was located or the claim will be conclusively deemed to have been abandoned.

Lester L. Rhoads, 43 IBLA 380 (Oct. 31, 1979)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year or the claim will be conclusively deemed to have been abandoned.

William A. Berry, 44 IBLA 162 (Nov. 30, 1979)

Where the National Park Service bars a claimant from entering mining claims by posting no-trespassing signs, barricading access roads, and threatening criminal action, the claimant is entitled to a deferment of its obligation to perform annual assessment work on the claims during the period access was denied.

American Resources, Ltd., 44 IBLA 220 (Dec. 11, 1979)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before the last day of the calendar year following the year the claim was recorded with BLM, the claim is properly deemed void.

Valda Waters, 44 IBLA 272 (Dec. 26, 1979)

COMMON IMPROVEMENT

Where in a patent application for a group of claims, pro rata credit for the value of a common, offsite improvement is to be attributed to each claim, it must be shown that the improvement was subsequent to the location of each claim so credited, and that the improvement is essential to the practical development and actually facilitates the extraction of ore from each claim.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

COMMON VARIETIES OF MINERALS

Generally

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man/marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

In determining the marketability of a common variety of sand and gravel from a mining claim, the possibility that the material could be sold for purposes for which ordinary earth may be used may not be considered, as such purposes are not validating uses cognizable under the mining laws.

A mining claim located for a common variety of gravel prior to the Surface Resources Act of July 23, 1955, cannot be sustained as being held as a reserve for the gravel deposit where the claimants had not established a discovery under the marketability test at that time. The "reserve rule" is not a substitute for discovery. A mining claimant's desire to hold a claim in hope that there will be an increase in the market demand and price does not satisfy the marketability test.

United States v. Clarion B. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

In order to prove that rhyolite used for building stone purposes is not a common variety of stone under sec. 3 of the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property; and (2) the unique property gives the deposit a distinct and special value. Possession of a unique property alone is not sufficient. The unique property must give the deposit a value for a purpose to which other materials are not suited or if the deposit is to be used for the same purposes as other minerals of common occurrence, it must possess some inherent property which gives it a special value for such use which value is generally reflected by the fact that the deposit commands a higher price in the marketplace or produces a substantially higher profit.

Common varieties of a particular mineral material do not have to be physically alike or equally desirable for a given purpose. When the evidence shows that other deposits occur commonly in the area and are similarly used, the fact that the subject deposit has qualities which are particularly well suited to that purpose does not, of itself, alter its essential character as a common variety material.

A deposit of rhyolite cannot be determined to be an uncommon variety of mineral solely on the basis of its location, even though the location gives the deposit a competitive advantage due to proximity to market, as location is not a unique property inherent in the deposit but is only an extrinsic factor.

United States v. Gerald E. Reden et al., 19 IBLA 326 (Apr. 7, 1975)

Where claims were located for common varieties of sand and gravel as well as other minerals prior to July 23, 1955, it must be shown that because of proximity to market, bona fides in development, the existence of present demand, and other relevant factors, the sand and gravel together with the other minerals could have been sold at that time for a reasonable profit. In the absence of such a showing, the value of the sand and gravel may not now be considered in determining whether a discovery of a valuable mineral deposit has been made, as the value of a nonlocatable deposit may not be added to that of a locatable deposit to establish a discovery.

A lack of sales of a mineral of widespread occurrence, such as sand and gravel, may raise a presumption that there was no demand for the mineral during that time, and, hence, the material was not marketable. The presumption may be overcome with credible evidence to the contrary or by bona fides in development.

United States v. C. V. Hallenbeck et al., 21 IBLA 296 (Aug. 11, 1975)

Where the Government has presented a prima facie case that a claimed mineral is a common variety pumice and further that the pumice was not marketable at a profit as of July 23, 1955, the burden of showing by a preponderance of the evidence either that the mineral is an uncommon variety or that it was marketable as of July 23, 1955, devolves upon the mineral claimants.

A deposit of pumice is not an uncommon variety of pumice merely because it can presently be mined, removed, and marketed at a profit. Rather, a mining claimant who asserts discovery of pumice must show that the deposit has a distinct and special value over other marketable deposits of pumice.

United States v. C. Fred Underwood et al., 22 IBLA 62 (Sept. 18, 1975)

The Act of July 23, 1955, 30 U.S.C. § 611 (1970), removed common varieties of cinder from location under the mining laws; thus, it is incumbent upon one who located a claim prior to that date for a common variety of cinder to show that all the requirements for a discovery, including a showing that the materials could have been extracted, removed, and marketed at a profit, had been met by that date.

United States v. Melton E. Baker, 23 IBLA 319 (Jan. 19, 1976)

The Act of July 23, 1955, excluded from mining location only common varieties of the materials enumerated in the Act, *i.e.*, "sand, stone, gravel, pumice, pumicite, or cinders"; therefore, a material must fall within one of those categories before the issue of whether it is a common variety becomes pertinent.

Where a stone containing feldspar is simply ground into rock form and used for landscaping and building stone purposes for which the feldspar element has no significance with respect to the stone's final use, the issue may properly arise as to whether the particular stone is a common variety which is excluded from mining location by the Act of July 23, 1955.

United States v. Robert W. Peal, 23 IBLA 378 (Feb. 6, 1976)

A deposit of rhyolite and dacite stone, used in the manufacture of asphaltic concrete and as sealcoating on asphalt pavement, which occurs in a naturally crushed state, which has been roughly stratified and naturally sorted by the forces of nature to an extent that is not found on any other material source in the area, which has little or no overburden, and which affords specification material at a cost significantly below that incurred for the production of any other aggregate from sources in the same market area, has special and distinct physical properties which give it distinct special economic value, and therefore it is locatable as an uncommon variety under the general mining law, and

its appropriation is not barred by 30 U.S.C. § 611 (1970).

United States v. Melvin McCormick, 27 IBLA 65 (Sept. 29, 1976)

In a contest of a mining claim located for common variety mineral materials prior to July 23, 1955, after which such locations were proscribed by law, where there has been no mining and no sales, the test of the validity of the claim is whether the claimant(s) could have mined and marketed the material profitably prior to that date and thereafter. The evidence tending to so show must relate to what a prudent man would have been reasonably justified in doing based upon the actual known circumstances at the time, not upon what he might have done if the proper conditions had then prevailed.

United States v. J. B. Osborne et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

In order to establish that a type of stone material is not a common variety under the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property, and (2) the unique property gives the deposit a distinct and special value. Where evidence establishes that geodes in a particular deposit have unique properties distinguishable from other types of stones which give the deposit of geodes a distinct and special value, the fact that the geodes may be similar to geodes from other areas which have similar properties and values is not sufficient evidence to establish that the deposit of geodes is a common variety of stone within the meaning of the Act of July 23, 1955.

United States v. Glenn C. Bolinder and L. C. Turner, et al., 28 IBLA 187 (Dec. 6, 1976)

83 I.D. 609

With respect to materials as common as sand and gravel, a mining claimant must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed and disposed of at a profit, and since common varieties were declared no longer locatable by the Act of July 23, 1955, 30 U.S.C. § 611 (1970), that a reasonably continuous market has existed from enactment of the statute.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

Mining claims located for deposits of common varieties of building stone, sand and gravel, if located prior to the Act of July 23, 1955, must be held to be invalid where it is not shown that these materials could have been profitably marketed prior to that date.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

Without evidence that obsidian similar to that found in great abundance elsewhere has a property giving it a special and distinct value, it is a common variety no longer locatable under the mining laws. The fact that obsidian may be tumbled and polished for rock

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Generally--Continued

bound purposes is not sufficient to meet the test of "uncommonness."

United States v. Margaret Mansfield, 35 IBLA 95 (May 15, 1978)

Whether a deposit of clay is a common variety and no longer locatable under the mining laws since the Act of July 23, 1955, or is still locatable depends on whether it has a unique property giving it a special and distinct value.

United States v. Schneider Minerals, Inc., and Agua Pura, Inc., 36 IBLA 194 (Aug. 3, 1978)

United States v. Jon Zimmers and Claire Kelly, 44 IBLA 142 (Nov. 30, 1979)

Common varieties of a particular mineral material do not have to be physically alike or equally desirable for a given purpose. When the evidence shows that other deposits occur commonly in the area and are similarly used, the fact that the subject deposit has qualities which are particularly well suited to that purpose does not, of itself, alter its essential character as a common variety material.

Where, prior to July 23, 1955, a deposit of the common rock of the country might have been deemed locatable as building stone because it met certain engineering specifications or requirements, if this were unknown at that time, or if its only real value prior to that date was for ordinary fill, riprap, sub-base, ballast or barrow, it cannot be treated as a valuable mineral deposit which would serve to validate a mining claim.

A deposit of what otherwise would be a common variety of mineral material cannot be regarded as uncommon on the basis that the deposit enjoys the simple economic advantage of closer proximity to the market.

United States v. Verdugo & Miller, Inc., 37 IBLA 277 (Oct. 20, 1978)

Where a mining claimant attempts to establish his location of a mining claim containing common variety minerals by invoking the terms of 30 U.S.C. § 38 (1976) and fails to complete the statutory period for holding and working his claim prior to July 23, 1955, BLM may properly hold such claim to be null and void.

Charles House, Mrs. Leonard Skinner, 42 IBLA 368 (Sept. 11, 1979)

Special Value

Building stone which is not suitable for any uses other than those to which ordinary building stone is put, and which does not command a higher market price than other similar building stone, may be considered locatable after July 23, 1955, as an uncommon variety of stone, only if it has a unique property which imparts a special value to the stone reflected in higher price or a substantially greater profit to the locator due to reduced overhead and costs of extraction and processing.

United States v. Ed Brandt, 21 IBLA 166 (July 22, 1975)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Special Value--Continued

In order to prove that stone containing feldspar used for landscaping and building stone purposes is not a common variety of stone under the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property, and (2) the unique property gives the deposit a distinct and special value. In the event the mining claimant does not establish that these criteria are met, the administrative law judge may properly hold that the stone cannot be classified as locatable under the mining laws because it is a common variety.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

Whether a deposit of building stone is an uncommon variety locatable under the mining laws after sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1970), depends on whether the deposit has a property giving it a distinct and special value as compared with other deposits of stone used for similar purposes.

In determining whether a deposit of building stone is a common or uncommon variety under sec. 3 of the Surface Resources Act, 30 U.S.C. § 611 (1970), a special and distinct value of a building stone may be reflected by a higher market value in comparison with deposits of common varieties, or by reduced costs or overhead so that the profit would be substantially more while the market price would remain competitive.

United States v. John W. Pope, 25 IBLA 199 (June 16, 1976)

In determining whether a deposit of mineral aggregate is a common variety where it is used for the same purposes for which common, ordinary aggregates are used, the deposit must be shown to have some rare or unique physical property which gives the material a special and distinct value for such use. Special and distinct value may be reflected by a higher market price in comparison with other aggregates or, alternatively, by reduced costs of overhead so that the profit to the producer would be substantially more while the market price remained competitive with material from other sources.

United States v. Melvin McCormick, 27 IBLA 65 (Sept. 29, 1976)

In determining whether a deposit of building stone is a common or uncommon variety under the Surface Resources Act, 30 U.S.C. § 611 (1970), a special and distinct value of a building stone may be reflected by a higher market value in comparison with deposits of common varieties, or by reduced costs or overhead so that the profit would be substantially more while the market price would remain competitive.

United States v. John W. Pope (On Reconsideration), 27 IBLA 133 (Sept. 30, 1976)

A clay's unique properties--superior bonding characteristics, high brilliance and low impurity content--which make it particularly suitable for use in the paper coating and ceramics industries, impart a special and distinct value to the clay through the generation of profits in excess of those which could be realized from a deposit of a common variety of the material.

United States v. Schneider Minerals, Inc., and Agua Pura, Inc., 36 IBLA 194 (Aug. 3, 1978)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Unique Property

Building stone which is not suitable for any uses other than those to which ordinary building stone is put, and which does not command a higher market price than other similar building stone, may be considered locatable after July 23, 1955, as an uncommon variety of stone, only if it has a unique property which imparts a special value to the stone reflected in higher price or a substantially greater profit to the locator due to reduced overhead and costs of extraction and processing.

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United States v. Schneider Minerals, Inc., and Agua Pura, Inc., 36 IBLA 194 (Aug. 3, 1978)

MINING CLAIMS--Continued

CONTESTS

When the Government contests a mining claim it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

When a Government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made; the Government's mineral examiner is not obliged to explore beyond the current workings of a mining claimant in attempting to verify a discovery.

United States v. Herbert Clark, 18 IBLA 368 (Jan. 30, 1975)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant. However, if the Government in a mining contest fails to present a prima facie case and the contestees move to dismiss the case and rest, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, any issue in doubt as to discovery raised by the evidence must be resolved against the party having the risk of nonpersuasion, the mining claimant. If a mining claimant fails to show by a preponderance of the evidence as to such issue that there has been a discovery of a valuable mineral deposit he has not satisfied his burden of proof and an administrative law judge must declare the claim invalid, rather than leave the question of the claim's validity unresolved.

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other essential issues to determine whether the application may be allowed.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

The fact that much of the evidence that supports a mining claimant's position in a mining claim contest is presented by the Government, rather than the claimant, does not mean that the claimant's burden of proof has not been met, because the entire evidentiary record must be considered in weighing the evidence and not simply the claimant's evidence alone.

Where the preponderance of the evidence in a mining claim contest supports an administrative law judge's dismissal of a contest complaint, that decision will not be disturbed upon appeal.

United States v. Kinsley Ranch Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

In a mining contest a mining claimant is the true proponent under the Administrative Procedure Act, 5 U.S.C. § 556(d) (1970), of a rule or order that he has complied with the mining laws, and he has the ultimate burden of proof--the risk of nonpersuasion--to show by a preponderance of the evidence that there is a valuable mineral deposit on the claim, when the Government has made a prima facie case of lack of such a discovery.

An administrative law judge has a duty to conduct a hearing in such a manner that all available relevant facts in a mining contest will be adduced. He should take special care to do so where a party is without counsel and there is confusion concerning the status of purported tendered evidence.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

The doctrine of res judicata will not bar an administrative proceeding to determine the validity of three unpatented mining claims where, in a previous condemnation action for the War Department's taking of a temporary exclusive easement covering the claims, the judgment of the Federal district court was limited solely to the compensation to be paid by the United States, and there was no litigation of the issue of the validity of the claims and no prior adjudication of that issue in the Department of the Interior.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimants concerning the validity of the claims with the intention that the claimants should act in reliance thereon, with the result that the claimants were thereby induced to do so, to their ultimate damage.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of three mining claims which were the subject of a previous condemnation action for the taking by the Government of a temporary exclusive easement over the claims, where the issue of the validity of the claims was not actually litigated and it was wholly unnecessary for the court to adjudicate that issue in rendering its judgment.

The Department of the Interior has jurisdiction, in proper proceedings, to determine the validity of mining claims on Federal lands.

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuble mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

United States v. A. B. Fleming et al., 20 IBLA 83 (Apr. 24, 1975)

A mining claim is a claim to property which may not be declared invalid except in accordance with due process of law. Due process consists of proper notice and opportunity for an agency hearing in accordance with the Administrative Procedure Act, and it suffices if the claimant is properly notified and afforded the opportunity to be heard. But there is no requirement that a hearing be held where the contestee fails to avail himself of the opportunity for a hearing within the time provided.

Under the Department of Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. The Secretary of the Interior is without authority to waive the rules to permit the late filing of the answer.

United States v. James R. and Sammy R. Ragsdale, 20 IBLA 348 (June 11, 1975)

When the Government contests a mining claim on a charge of no discovery it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

United States v. Charles J. MacIver et al., 20 IBLA 352 (June 11, 1975)

In a mining claim contest, the claimant is the proponent of the rule or order that he has complied with the provisions of the mining law, which have been brought into issue, and the Government bears the burden only of presenting a prima facie case of invalidity; the claimant must then preponderate on the issues litigated.

Where the hearing record in a mining claim contest is unsatisfactory, a "stipulation" on another issue may have prevented the introduction of evidence relevant to the issue on appeal, the parties will not be unduly burdened, and further proceedings will likely be productive of relevant evidence, the Board may remand the case for additional hearing.

United States v. Ed Brandt, 21 IBLA 166 (July 22, 1975)

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. C. V. Hallenbeck et al., 21 IBLA 296 (Aug. 11, 1975)

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

MINING CLAIMS--Continued

CONTESTS--Continued

When the Government contests a mining claim and establishes a prima facie case that contestee has not made a discovery of a locatable mineral deposit, the burden devolves on contestee to establish by a preponderance of the evidence that the claim has been validated by the discovery of a locatable mineral deposit.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

Where the answer to a mining contest complaint denying the charges is timely filed by one contestee, but is untimely filed by all other contestees, the charges as to those contestees filing untimely answers will be taken as admitted and their interests in the mining claims will be declared null and void. The contestee who filed a timely answer is entitled to a hearing as to the validity of the claims.

United States v. Albert S. Hunter et al., 22 IBLA 28 (Sept. 10, 1975)

Where the Government has presented a prima facie case that a claimed mineral is a common variety pumice and further that the pumice was not marketable at a profit as of July 23, 1955, the burden of showing by a preponderance of the evidence either that the mineral is an uncommon variety or that it was marketable as of July 23, 1955, devolves upon the mineral claimants.

United States v. C. Fred Underwood et al., 22 IBLA 62 (Sept. 18, 1975)

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Ruth Arcand et al., 23 IBLA 226 (Jan. 9, 1976)

The Department of the Interior has the right to contest the validity of an unpatented mining claim at any time until patent issues.

A judgment is not conclusive of a fact erroneously assumed when the fact was not actually litigated and determination thereof was not essential to the decision.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of five mining claims which, together with another claim, were the subject of previous condemnation actions for the taking of a temporary exclusive easement over the claims, where the issue of the validity of the individual claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

MINING CLAIMS--Continued

CONTESTS--Continued

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance thereon, with the result that the claimant was thereby induced to do so, to his ultimate damage.

There can be no waiver of the Secretary's right to contest a mining claim believed to be invalid without a showing of an authority to make such a waiver and an intention to do so.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

When the Government contests a mining claim, it has assumed the burden of presenting a prima facie case that the claim is invalid; when it has done so, the burden then devolves on the mining claimant to prove by a preponderance of the evidence that the claim is valid.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

Where a contestee makes a timely response to a Government complaint in a mining contest, which can reasonably be construed as a general denial of the allegations contained in the complaint, the response will be considered a sufficient answer within the contemplation of the regulations. The allegations then cannot be taken as admitted and the mining claim declared null and void without a hearing.

United States v. Cliff Libby, 24 IBLA 39 (Feb. 19, 1976)

The Board of Land Appeals may set aside a previous Departmental decision, which declared mining claims invalid for lack of discovery, and remand the case for a further hearing, where contestee submitted a Petition for Reconsideration with affidavits alleging that, since the hearing, the claims have been mined by lessees who have approximately 10,000 tons of minable ore blocked out with assays averaging from 6 to 8 pounds of mercury per ton of ore.

United States v. Evelyn P. Higgins et al., 24 IBLA 187 (Mar. 18, 1976)

Lands within national parks are not subject to mining location except where specifically authorized by law. 43 CFR 3811.2-2. However, lands within a national forest remain open to location and entry under the mining laws. 16 U.S.C. § 478 (1970). Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of withdrawal for the national park by such a discovery, the land within the claims located in the park would not be excepted from the effect of the withdrawal.

United States v. Wallace W. Vaux, 24 IBLA 289 (Apr. 1, 1976)

When a Government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made.

United States v. John M. Tappan, Jr., et al., 25 IBLA 1 (May 5, 1976)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit.

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

When the Government contests a mining claim on a charge of no discovery it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

A mining claim is a claim to property which may not be declared invalid without proper notice and an adequate opportunity for an agency hearing in accordance with due process of law. That due process consists of notice and opportunity for hearing, and it suffices if the claimant is afforded the opportunity to be present and heard. The fact that the claimant, after filing a timely answer to the contest complaint, refused to attend that hearing and produce evidence does not vitiate the due process he has received.

United States v. Carl Bellamy, 25 IBLA 50 (May 18, 1976)

Under the mining law, discovery of a valuable mineral deposit is the sine qua non for a valid mining claim. Even if location of a mining claim appears not to be supported by discovery, a cloud is cast upon the United States' title, which the Government may seek to remove by bringing a contest to determine whether the claim is valid.

In a mining contest, the mining claimant is the proponent of a rule or order that he has complied with the mining laws entitling him to validation of the claim, and the claimant has the ultimate burden of proof. The Government has assumed the burden of going forward with sufficient evidence to establish a prima facie case of invalidity. When this has been done, the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

Where the Government fails to present a prima facie case, a contestee, upon timely motion, may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record. Therefore, even if the Government has failed to make a satisfactory prima facie case, or the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderance of the evidence, bearing the risk of nonpersuasion if he fails.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

A civil action in a Federal district court condemning a mining claim for a period of years for the exclusive use of the United States does not bar a subsequent contest by the Department of the Interior challenging the validity of the claim.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

Where the Government contests a mining claim, official notice of a change in the published price of gold from that given at the hearing, as set forth in the evidence, may be taken by both the administrative law judge and the Board of Land Appeals, but official notice cannot be given to asserted "modern methods of extraction of gold."

United States v. Gold Placers, Inc., 25 IBLA 368 (July 6, 1976)

The right to a hearing on disputed issues of fact involving mining claims includes the right to adequate notice of the grounds upon which a claim's invalidity is asserted.

A Government contest complaint which asserts the invalidity of a claim because of insufficient quantity and quality of the located mineral within the limits of the claim does not put into issue the existence of excess reserves within the limits of a claim.

Where the alleged ground of invalidity of a claim was not charged in the complaint, and was not a matter of contention at the hearing, invalidation of the claim on such ground is improper, despite some evidence to support it, absent an opportunity for the contestee to present evidence on such issue where it appears that there is other pertinent evidence that may be submitted on that issue.

Where on appeal from a decision sustaining the Government's challenge of a patent application it is determined that the alleged ground of invalidity was one not raised in the complaint or at the hearing, the decision rejecting the patent application will be set aside and the Government will be afforded an opportunity to amend its complaint to embrace the charge. Where the Government does amend its complaint the mineral claimant will be granted the right to an evidentiary hearing on such issue.

United States v. Robert B. McElwaine, 26 IBLA 20 (July 7, 1976)

A person who admits he has no interest in a mining claim which has been held invalid for failure of the named contestee to file an answer other than he disputes a charge that the land in the contested claim is not mineral in character or that the date of a withdrawal is incorrect is not adversely affected by the decision and has no standing to appeal.

United States v. William Robinson & William McCaskill, Phelps Dodge Corp., 26 IBLA 137 (Aug. 2, 1976)

The Department of the Interior may contest the validity of any unpatented mining claim located on public land, including claims located within powersite withdrawals; the Department's authority to contest the validity of mining claims was not diminished by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

Although, in a mining claim contest, the Government may make a prima facie case of no discovery by the testimony of a mineral examiner that he has been on the land in issue and saw nothing of mineral value, a prima facie case is ordinarily not made where it is established that the examiner was not on the land in issue.

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Co., Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the administrative law judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

Where a mineral examiner testifies on the basis of his examination of mining claims that the mineral values on the claims are insufficient to support a finding of discovery, a prima facie case against the validity of the claims has been established, and where the contestees walked out of the hearing and did not submit evidence to rebut the prima facie case, the claims must be declared invalid.

The Secretary of the Interior has the authority to determine the validity of mining claims upon adequate notice and opportunity for hearing.

United States v. Mine Development Corp. et al., 27 IBLA 238 (Oct. 18, 1976)

Where the testimony and conclusions of an expert witness are based on careful examination of a mining claim by appropriate scientific methods, they will be accepted into evidence and given appropriate weight regardless of the fact that the witness may not be registered within that particular State as an expert in his field.

When, as a result of direct proceedings against mining claims, the Department determines that no discovery has been made, the claims must be declared null and void notwithstanding that they are located on land patented under the Stock-raising Homestead Act and the contest was privately initiated.

Cabot Sedgwick et al. v. C. M. Parker, 27 IBLA 256 (Oct. 20, 1976)

In a Government contest of the validity of a mining claim it is the claimants who are the true proponents of a rule or order, namely, that they have complied with the mining laws and have qualified to receive fee title to the land.

In a contest of a mining claim located for common variety mineral materials prior to July 23, 1955, after which such locations were proscribed by law, where there has been no mining and no sales, the test of the validity of the claim is whether the claimant(s) could have mined and marketed the material profitably prior to that date and thereafter. The evidence tending to

MINING CLAIMS--Continued

CONTESTS--Continued

so show must relate to what a prudent man would have been reasonably justified in doing based upon the actual known circumstances at the time, not upon what he might have done if the proper conditions had then prevailed.

While the existence of other land values does not qualify a locator's rights under the mining law if he has a valid claim, evidence of such other values may be considered in assessing the weight and credibility to be accorded the locator's testimony in determining whether a discovery has been made, and may be a factor in evaluating his bona fide intention to develop a mining operation.

In determining whether a profitable market existed for material from a particular mining claim from which no material has been sold, a hypothetical market must be created in which the new material plays its part. The new material from the claim at issue must be included with that from all other known potentially competitive sources in calculating the factor of supply. If the supply so calculated amounts to a superabundance and so overwhelms the existing demand as to reduce the value or profit increment to a level below that which would prove attractive to a prudent man, the material cannot be said to be marketable at a profit.

United States v. J. R. Osborne et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

In a mining contest, a matter not charged in the complaint may only be considered by the administrative law judge if it was raised at the hearing without objection and the contestee was fully aware that the issue was raised.

United States v. Glenn C. Bolinder and L. C. Turner, et al., 28 IBLA 187 (Dec. 6, 1976)

83 I.D. 609

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. A mining claim may be declared null and void where there was a charge in the complaint of insufficient minerals to constitute a valid discovery.

United States v. William C. Smith, a/k/a Bill Smith, 29 IBLA 7 (Feb. 8, 1977)

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. However, under the rules an answer may be accepted if it is received within 10 days after the due date and it is determined that the answer was probably transmitted before the end of the period in which it was required to be filed.

United States v. Jesse Smith, 29 IBLA 10 (Feb. 8, 1977)

MINING CLAIMS--Continued

CONTESTS--Continued

Where the answer to a mining contest complaint denying the charges is not timely filed, the charges will be deemed admitted and the contest will be decided without a hearing. 43 CFR 4.450-7(a).

United States v. Edison J. Schaefer, 29 IBLA 84 (Feb. 23, 1977)

When the Government has presented a prima facie case of lack of discovery of a valuable mineral deposit on a mining claim, the mining claimant then has the burden of establishing by a preponderance of the evidence that the discovery test has been met. Consequently, the ultimate burden of proving discovery is always upon the mining claimant.

United States v. George J. Bunt and A. F. Goodwin, 29 IBLA 86 (Feb. 23, 1977)

When a mining claimant has failed to answer a complaint in a mining contest, the allegations are deemed admitted and the State Office of the Bureau of Land Management will decide the case without a hearing. 43 CFR 4.450-7(a).

A defaulting contestee may not rely on an answer filed by another contestee in the same contest when such answer never purported to be on behalf of the defaulting contestee.

United States v. Frederick A. Hagg et al., 29 IBLA 128 (Feb. 23, 1977)

Under the mining law discovery of a valuable mineral deposit is the *sine qua non* for a valid mining claim. State mining laws relating to discovery may only add to the Federal mining law; such laws cannot diminish the Federal requirements for discovery of a valuable mineral deposit on a mining claim located on Federal lands.

United States v. Bradley B. Denham, 29 IBLA 185 (Mar. 18, 1977)

A mining claim is properly declared null and void where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

United States v. Chester L. Ramsey, 29 IBLA 243 (Mar. 25, 1977)

United States v. Wayne E. Highley, 30 IBLA 21 (Apr. 7, 1977)

Once the Government has established in a mining claim contest a prima facie case that the claims are not valid for lack of discovery, the burden shifts to the contestee to prove the discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Howard S. McKenzie, 29 IBLA 270 (Mar. 28, 1977)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant, but if the Government in a contest fails to present a prima facie case and the contestee moves to dismiss the case and rests, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by contestee shows there has not been a discovery, it may be used in reaching a decision that the claim is invalid regardless of any defects in the prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, and a mining claimant fails to show discovery by a preponderance of the evidence, he has not satisfied his burden of proof and the claim must be declared invalid.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

In a Government contest challenging the validity of mining claims located for a clay-type material, an adequate prima facie case is established where there are expert witness opinions that the deposit is only a common clay or shale and it cannot meet refractory standards. The contestees then must go forward with evidence to rebut the Government's case with a preponderance of the evidence.

United States v. Thomas J. Peck et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

United States v. Richard E. Walls, 30 IBLA 333 (June 7, 1977)

United States v. Leslie Farling and William Farling, 32 IBLA 29 (Aug. 31, 1977)

United States v. Clark J. Guild et al., 34 IBLA 387 (May 3, 1978)

United States v. Don Lee Seto and Pauline Seto, 35 IBLA 4 (May 3, 1978)

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

United States v. John A. Cooley, 43 IBLA 276 (Oct. 15, 1979)

A mining claimant must prove a discovery under the prudent man test, including that the mineral can be extracted, removed and marketed at a profit.

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

The Bureau of Land Management, in exercise of its authority to regulate the acquisition of rights in the public lands, may contest any unpatented mining claim located on public land under its jurisdiction to determine, among other things, if the claimant has discovered on his mining claim a valuable mineral deposit as required by 30 U.S.C. § 22 (1970).

Although the Government has assumed the burden of proof in mining claim contests of presenting a prima facie case of lack of discovery, once it has done so, the burden shifts to the claimant to prove by a preponderance of the evidence the discovery of a valuable mineral deposit. A prima facie case is established when a Government mineral examiner testifies that she examined the claim and could find no evidence showing the discovery of a valuable mineral deposit.

United States v. Gwendolyn McClurg et al., 31 IBLA 8 (June 15, 1977)

Where the Government contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Where a Government mineral examiner testifies that he extensively examined the claims and workings thereon, and had assayed numerous samples taken from the claims but found no evidence of a valuable mineral deposit that would support a discovery, a prima facie case of lack of a mineral discovery has been made.

United States v. A. C. Partell, 31 IBLA 47 (June 23, 1977)

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

Since a Government contest is not insufficient and subject to dismissal for failure to name all parties in interest, a contest is properly brought against persons who are heirs of a director of a corporation whose charter has expired under State law, even though the State law provides that the property of such a corporation passes to a public trustee for distribution by him. Any interest of those not named or served in a manner provided by the pertinent regulation is not affected.

United States v. Emma Elizabeth Conner, and Walter S. Nolte, as the Heirs of R. W. Speer, a last known director of the Arlington Gold Mining Co. (Contestees), 31 IBLA 173 (July 5, 1977)

Past evidence of successful mining activity has limited probative value in determining whether there is a present discovery of a valuable mineral deposit on a mining claim, and assay reports can be given little weight when they are not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed in taking the sample.

United States v. Lee Nicholson et al., 31 IBLA 224 (July 7, 1977)

Where, pursuant to 43 U.S.C. § 315g (1970), a State has acquired land subject to a reservation of minerals to the United States, and the State thereafter leases the surface of the land to a corporation for purposes which are plainly incompatible with mining, the surface lessee has standing to initiate a private contest to determine the validity of unpatented mining claims located on the land. It is not essential to the cause of action that there be an actual physical interference by one party with the other party's use of the land if their respective interests are clearly and potentially conflicting.

Continental Oil Co. v. Aztec Exploration and Development Co., 32 IBLA 1 (Aug. 24, 1977)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to such location, the Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Where the expert witnesses called by the Government testify that prior to July 23, 1955, there was no profitable market for common variety minerals from the subject claims and that it would have been economic folly to undertake the development a mine thereon, a prima facie case of invalidity has been made. Thereafter, upon the failure of the claimant to prove the contrary by a preponderance of credible evidence, a determination that the claims are invalid is obligatory.

Where, in a contest to determine the validity of certain mining claims located for common building stone, sand and gravel, the Government charges that the claims were not located prior to the Act of July 23, 1955, which prohibited the subsequent location of such minerals, the finding by the Hearing Examiner and two administrative appellate tribunals that the charge is true and the claims were not timely located requires a holding that the claims are null and void, where such finding is supported by a preponderance of credible evidence.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

In a proceeding to determine the validity of an unpatented mining claim the claimants must prevail, if at all, upon the strength of their own case, rather than upon any weakness in that of the Government.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

The "marketability rule" requiring a demonstration of present marketability at a profit is (and always has been) applicable to all mining claims, whether for base metals or for precious minerals.

United States v. E. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

United States v. Robert A. Bukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

When a contestee fails to answer a complaint, the allegations are deemed admitted and the case may be dismissed with prejudice as to that contestee. In addition, in a Government contest, the complaint is not deemed to be insufficient or subject to dismissal where the Government fails to name all interested parties, or for failure to serve every party who has been named.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and is present within the limits of the claim.

MINING CLAIMS--Continued

CONTESTS--Continued

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

United States v. John C. Morton et al., 32 IBLA 263 (Sept. 27, 1977)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States, including lands within the National Forest System, after adequate notice and opportunity for hearing. A mining claim contest initiated under the authority of the Secretary of the Interior may be prosecuted by counsel employed by the Department of Agriculture acting on behalf of the Forest Service where such action is in accordance with a Memorandum of Understanding between the agencies.

It is not necessary for the Government to prepare an environmental impact statement before issuing a complaint in a mining claim contest, as the determination of the validity of a mining claim is not a "major Federal action" within the ambit of sec. 102 of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (1970).

United States v. Ernest F. D ven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

A Bureau of Land Management decision, dismissing an answer to contest complaints filed in behalf of individual contestees and a company, and holding mining claims null and void because it appeared the company did not own the claims and because the answer was filed in behalf of the individual contestees by someone not authorized to practice in their behalf, will be vacated where on appeal it is shown that within the time for filing the answer the claims had been transferred to the company. There is no need to dismiss the contest and initiate a new contest against the company since a timely answer has been filed in its behalf; instead, the complaints should be amended to substitute the company as the contestee and party in interest and the contest proceeding should go forward against it.

Sharon K. Milazzo et al., 33 IBLA 57 (Dec. 5, 1977)

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

Andrew J. Van Derpoel et al., 33 IBLA 240 (Jan. 5, 1978)

Where a contest complaint charges that no minerals of a variety subject to the mining laws sufficient in quality, quantity, and value to constitute a discovery are disclosed on a claim, and that the land embraced in the claim is nonmineral in character and the contestee fails to file an answer to the complaint in accordance with departmental regulations, the allegation of the complaint will be taken as admitted by the contestee and the claim is properly held null and void.

United States v. Ronda Niece and Leslie Niece, 33 IBLA 290 (Jan. 10, 1978)

Although a millsite may be declared invalid when its only use is in connection with a mining claim which is declared invalid, a millsite can be contested separately and declared invalid when evidence establishes it is not being used for mining or milling purposes, independent of the issue of the validity of the mining claim.

A millsite is used for mining or milling purposes if the use is a function or utility intimately associated with the removal, handling or treatment of the ore from the vein or lodes. Some step in or directly connected with the process of mining or some feature of milling must be performed on the millsite.

Where the evidence presented at a hearing demonstrates a lode claim to be valid, a contest against a millsite held by the owner of the lode claim will be dismissed if the millsite is being used or occupied for mining or milling purposes.

United States v. John B. Parsons, 33 IBLA 326 (Jan. 16, 1978)

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

United States of America v. David L. King et al., 34 IBLA 15 (Feb. 10, 1978)

In a mining contest a contestee may rest at the close of the Government's case and move for a dismissal based on the Government's failure to make out a prima facie case of a claim's invalidity. If, however, the contestee goes forward and presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

MINING CLAIMS--Continued

CONTESTS--Continued

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Unsubstantiated allegations of temporary incapacity due to a nervous breakdown cannot serve as a basis for waiving this mandatory requirement.

United States v. Brent J. Brunker, 36 IBLA 36 (June 27, 1978)

The Department of the Interior is lawfully empowered to initiate a contest pursuant to the Administrative Procedure Act to determine the validity of unpatented mining claims. This procedure makes no provision for 1) trial by jury, 2) advice to the contestant concerning his constitutional rights, 3) compensation to the contestant for the value of the claim if it is found to be invalid, or 4) appointment by the Department of qualified counsel to represent the contestant; and this procedure does not violate constitutional guarantees of due process, the General Mining Law, or the Administrative Procedure Act. Presentation of the contestant's case by counsel employed by the Forest Service in appropriate cases is permissible, and Federal employees may testify as witnesses, and may conduct examinations and secure mineral samples on unpatented mining claims without a search warrant.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

Where, in a mining contest, a contestee presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Where the claimant presents evidence of returns which are so meager that they will not attract the labor and means of a person of ordinary prudence, he has failed to prove by a preponderance of the evidence that his claim is valid, and it is properly declared null and void.

United States v. Joseph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

This Department has authority and jurisdiction to contest mining claims on the ground that they are invalid for lack of a discovery of a valuable mineral deposit, regardless of whether any other use of the land is being made or sought. The motivation of the Forest Service in instigating a contest is irrelevant.

United States v. Catherine E. Gay, 36 IBLA 148 (July 31, 1978)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

United States v. Florence J. Mattox, 36 IBLA 171 (July 31, 1978)

United States v. Emmett C. Harder, 42 IBLA 206 (Aug. 22, 1979)

United States v. Edward T. McHenry et al., 43 IBLA 122 (Sept. 26, 1979)

Where a contestee in a mining claim contest declares, of his own volition, that he does not want the claim and wishes to withdraw his answer and admit the allegations in the contest complaint, and subsequently volunteers to, and does, sign a written relinquishment of his interests in the contested claims, his claims are properly declared null and void.

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. Wesley C. Miles, Sr., 36 IBLA 213 (Aug. 3, 1978)

In a mining claim contest, no weight will be given to claimant's allegation that the Government's mineral examiner failed to sample the discovery point or the best mineral showings, where the claimant was invited to indicate his discovery to the examiner and failed to do so, and where he also failed to introduce convincing evidence of his own that a discovery had been made.

United States v. Larry Joseph Tims, 36 IBLA 316 (Aug. 23, 1978)

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to mineral claimant's lack of good faith must be clear.

United States v. Clayton A. Dillman and Jean P. Dillman, 36 IBLA 358 (Aug. 31, 1978)

MINING CLAIMS--Continued

CONTESTS--Continued

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies.

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Andrew L. Freese II, 37 IBLA 7
(Sept. 6, 1978)

In mining claim contest, Government must only go forward with evidence to establish prima facie case of no discovery of valuable mineral deposits, and burden then shifts to mining claimant to prove by preponderance of evidence that his claim is valid.

Government has established prima facie case when its mineral examiner testifies that he has examined mining claims in issue and found mineral values insufficient to support finding of discovery of valuable deposits.

Where contestee has not produced substantial evidence in respect to quantity of iron oxide ore existing on claims, or in respect to whether ore can be extracted and marketed at profit, contestee has not proved that person of ordinary prudence would be justified in further expenditure of his labor and means, with reasonable prospect of success, in developing valuable mine.

United States v. Michael E. Marion, 37 IBLA 68
(Sept. 18, 1978)

A prima facie case has been made when a Government mineral examiner testifies that he has examined the claim and found evidence of mineralization insufficient to support a finding of a discovery.

United States v. Paul P. Fisher and Buel B. Fisher,
37 IBLA 80 (Sept. 22, 1978)

Intervention, by right, as a full party in a contest proceeding is only recognized where the individual seeking intervention has the necessary interest to maintain a private contest independently under 43 CFR 4.450-1.

The extent of the participation in a contest hearing to be afforded "interested individuals" who do not have a sufficient interest to maintain a private contest is committed to the sound discretion of the administrative law judge. Among the factors which are properly considered are: the desires of the original parties; the likelihood that the party seeking intervention will provide information which would not be forthcoming without its participation; and the cost which must be borne by both the contestant and the contestee by the nature and scope of the intervention granted.

United States v. United States Pumice Co., 37 IBLA 153
(Oct. 5, 1978)

MINING CLAIMS--Continued

CONTESTS--Continued

Where a mineral patent application is supported by information sufficient to permit a mineral examination of the claims, but not sufficient for the adjudicator to approve the application for patent, he may properly call on the applicant for supplemental evidence to support the application. However, if the claimant fails to submit it, the adjudicator may not penalize such failure by summary rejection of the application for reasons relating to disputed issues of fact without notice and an opportunity for hearing.

Where unpatented mining claims were located some 50 years before the claimant filed application for patent, during which time they went unchallenged by the Government, the United States is not barred from contesting the validity of the claims by invocation of the equitable defense of laches.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 16, 1978)

Where national forest land is open to mineral location, the failure of a district forest ranger to object to the location or development of mining claims for a number of years, or to request that a contest of the validity of the claims be initiated, does not estop the United States from bringing a contest, nor is the contest barred by laches.

United States v. Verdugo & Miller, Inc., 37 IBLA 277
(Oct. 20, 1978)

When the Government contests a mining claim on a charge of no discovery it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. The burden then shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants.

United States v. Loren E. Burns et al., 38 IBLA 57
(Nov. 20, 1978)

Once the Government has established a prima facie case that no discovery of a valuable mineral deposit has been made within a mining claim, the burden of proof shifts to the contestee to establish by a preponderance of the evidence the existence of a discovery.

United States v. Jack C. Harris, Jill L. Harris,
38 IBLA 137 (Nov. 29, 1978)

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

Mineral values on a claim may properly be tested by taking dry samples and washing them down to a concentrate. The absence of adequate water to run a dredging operation at the claim due to drought conditions is immaterial, as it is not necessary to run a dredge in order to sample the mineral values there.

It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument that the samples taken by the examiner are not representative will be rejected.

Unless and until the lands within a mining claim are patented to the claimant, they are Federal lands, and the Government retains the right to enter the lands at any time without search warrants, including the right to remove material samples from the claim in order to determine whether the land is mineral in character and whether a valuable deposit of a locatable mineral has been discovered by the claimant.

As the Government is required to adjudicate mining claims contests under its own rules and regulations, a customary review of the validity of a claim by a district examining committee is immaterial to the adjudication of the actual validity of the claim. Local customs relating to validity of a claim may only add to the Federal mining law; such customs cannot replace Federal requirements for adjudicating the validity of claims.

United States v. Russ Knecht, 39 IBLA 8 (Jan. 8, 1979)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Where contestees deny the allegations in the complaint only as to 4 claims but not as to 15 other claims addressed in the complaint, the complaint will be taken as admitted as to the 15 claims not addressed in the answer to the complaint.

Where contestees in a mining claim contest file a timely answer to the contest complaint, this answer is efficacious as to any other contestees who are members of his family if it appears on the face of the answer that they wish to retain their interests, if any, in the claims, as the contestees who answered may be regarded as having done so on their family members' behalf. In these circumstances, these other contestees are properly regarded as having answered the complaint, absent any manifestation of a contrary intent.

Where a contestee makes a timely response to a Government complaint in a mining contest which is sufficient to raise a justiciable controversy, the allegations then cannot be taken as admitted and the mining claim(s) cannot be declared null and void without a hearing.

United States v. Jerry Prock et al., 39 IBLA 148 (Jan. 29, 1979)

A Government contest against a mining claim does not lose its public character and become a private contest because the land involved may ultimately be conveyed to a private entity in a land exchange, nor does that possibility warrant the application of any different standard for determining whether there has been a discovery of a valuable mineral deposit within the claim, or a different burden of proof.

United States v. George B. Edelins et al., 39 IBLA 236 (Feb. 13, 1979)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing.

United States v. James Hawkeswood et al., 41 IBLA 245 (June 27, 1979)

United States v. Edna Horstmeier, 42 IBLA 33 (July 26, 1979)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

The entire evidentiary record in a mining contest is considered and if evidence presented by a contestee is damaging to the contestee's case it may be used against the contestee regardless of any deficiencies in the Government's presentation. Therefore, regardless of whether the Government established a prima facie case of lack of discovery, if the entire record establishes that a discovery was not made on a claim it is properly declared null and void.

It was proper to deny mining claimants' request to redrill on mining claims after the land was withdrawn from mining where the work would be an effort to make a discovery of a valuable mineral deposit within the claim rather than simply a confirmation or corroboration of a discovery prior to the withdrawal.

United States v. William Lavon Chappell et al., 42 IBLA 74 (Aug. 13, 1979)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

A sufficient prima facie case by the Government does not require positive proof that there has been no discovery made or that the mining claim is nonmineral in character. Upon the Government's presentation of a prima facie case, the burden shifts to the claimant to prove by a preponderance of the evidence that he indeed has a discovery of a valuable mineral deposit within the limits of the claim.

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Andy Syndbad, 42 IBLA 313 (Aug. 29, 1979)

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

United States v. Zed G. Ax, 43 IBLA 146 (Sept. 28, 1979)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument that the samples taken by the examiner are not representative will be rejected.

United States v. John B. Burt et al., 43 IBLA 363 (Oct. 29, 1979)

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

When land is withdrawn from mining location after a mining claim has been located thereon, the claimant must show that discovery of a valuable mineral deposit occurred *prior* to the withdrawal in order to establish rights against the Government.

United States v. Ralph Page et al., 43 IBLA 390 (Oct. 31, 1979)

The Department of the Interior has the right to contest the validity of an unpatented mining claim at any time until patent issues.

It is the responsibility of a mining claimant to present evidence supporting his allegation of bias on the part of Government mineral examiners testifying as to the validity of his claim in a contest proceeding, and a showing of Department affiliation does not discredit a witness.

The procedures of the Department of the Interior in mining contests where a mining claimant is afforded notice and an opportunity to be heard comport with the requirements of due process under the United States Constitution.

United States v. J. D. Wilson, 44 IBLA 1 (Nov. 6, 1979)

The BLM should presume the validity of mining claims or the development of mineral leases disclosed by abstracts submitted by the preference right lease applicant, and allow the applicant to pursue the remedy of private contests or, failing that, issue a notice of intent to reject the lease application where claims or development are shown, and allow the preference right lease applicant the opportunity to show, on the record, the invalidity of the claims, or lack of development, or both.

Effect and Implementation of Solicitor's Opinion M-36893 on "Unclaimed, Undeveloped," M-36893 (Supp.) (Nov. 19, 1979) 86 I.D. 627

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the U.S. Forest Service and prosecuted by counsel employed by the U.S. Department of Agriculture, with U.S. Forest Service employees as witnesses.

An administrative law judge in rendering a decision need not make a separate ruling on each finding of fact and conclusion of law. It is sufficient if the decision summarizes the controlling principles of law and the testimony of witnesses relative thereto and explains why appellants' evidence was insufficient to meet the legal test for a discovery of valuable mineral.

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Jon Zimmers and Claire Kelly, 44 IBLA 142 (Nov. 30, 1979)

When the Government contests a mining claim, located on land withdrawn from mineral entry, the burden of presenting a prima facie case is satisfied by the testimony of a well qualified mineral examiner that he has examined the exposed workings on a claim without finding sufficient mineral values to support a conclusion there was a discovery of a valuable mineral deposit either at the time of the withdrawal or at the time of his inspections.

United States v. Cecilia Puccinelli, 44 IBLA 266 (Dec. 19, 1979)

Where a mineral patent application is supported by a mineral examination of the claim which finds a valid discovery and recommends issuance of a patent for a portion of the claim, the BLM may not summarily reject the application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Calcium Co., 44 IBLA 289 (Dec. 26, 1979)

MINING CLAIMS--Continued

CONTESTS--Continued

When the Government contests a mining claim on a charge of no discovery of a valuable mineral deposit it assumes the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

The decision of an administrative law judge will not be disturbed on appeal where the preponderance of the evidence supports the result he reached.

United States v. Knox-Arizona Corp., 44 IBLA 297 (Dec. 31, 1979)

DETERMINATION OF VALIDITY

When the Government contests a mining claim it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

When a Government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made; the Government's mineral examiner is not obliged to explore beyond the current workings of a mining claimant is attempting to verify a discovery.

United States v. Herbert Clark, 18 IBLA 368 (Jan. 30, 1975)

The Department of the Interior has the authority and the duty to contest mining claims which it believes are invalid, notwithstanding that the claims are located in a national forest and the Forest Service has no objection to approval of a patent application.

Estate of Arthur C. W. Bowen (Deceased), 18 IBLA 379 (Jan. 30, 1975)

On petition for reconsideration, the assertion of rights to a mining claim under an Aug. 1968 location does not demonstrate error in or require reconsideration of this Board's decision, which affirmed that a mining claim located in 1969 for the same land, after the land was withdrawn from mineral location in Oct. 1968, was null and void ab initio. Neither this Board's decision initially or on petition affects petitioner's rights, if any, under such a prior location.

R. C. Jim Townsend (On Reconsideration), 18 IBLA 407 (Feb. 10, 1975)

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man/marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

essential issues to determine whether the application may be allowed.

United States v. Clarion S. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970), (2) there are no intervening rights, (3) a claimant alleges tht he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable State statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of sec. 621 et seq., and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

A discovery exists where minerals have been found within the limits of a claim and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

In order to prove that rhyolite used for building stone purposes is not a common variety of stone under sec. 3 of the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property; and (2) the unique property gives the deposit a distinct and special value. Possession of a unique property alone is not sufficient. The unique property must give the deposit a value for a purpose to which other materials are not suited or if the deposit is to be used for the same purposes as other minerals of common occurrence, it must possess some inherent property which gives it a special value for such use which value is generally reflected by the fact that the deposit commands a higher price in the marketplace or produces a substantially higher profit.

A deposit of rhyolite cannot be determined to be an uncommon variety of mineral solely on the basis of its location, even though the location gives the deposit a competitive advantage due to proximity to market, as location is not a unique property inherent in the deposit but is only an extrinsic factor.

United States v. Gerald L. Heden et al., 19 IBLA 326 (Apr. 7, 1975)

The doctrine of res judicata will not bar an administrative proceeding to determine the validity of three unpatented mining claims where, in a previous condemnation action for the War Department's taking of a temporary exclusive easement covering the claims, the judgment of the Federal district court was limited solely to the compensation to be paid by the United States, and there was no litigation of the issue of the validity of the claims and no prior adjudication of that issue in the Department of the Interior.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimants concerning the validity of the claims with the intention that the claimants should act in reliance thereon, with the

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

result that the claimants were thereby induced to do so, to their ultimate damage.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of three mining claims which were the subject of a previous condemnation action for the taking by the Government of a temporary exclusive easement over the claims, where the issue of the validity of the claims was not actually litigated and it was wholly unnecessary for the court to adjudicate that issue in rendering its judgment.

The Department of the Interior has jurisdiction, in proper proceedings, to determine the validity of mining claims on Federal lands.

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuble mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

United States v. A. B. Fleming et al., 20 IBLA 83 (Apr. 24, 1975)

Marketability of mineral material is not the sole test of the validity of a mining claim. Profitable sales of mineral material for nonvalidating uses cannot be used in determining the validity of a mining claim; the claimant must meet the prudent man/marketability test in a market for which the material is locatable.

Bog iron ore, used as a soil conditioner or soil amendment, is not a locatable mineral deposit in the absence of a showing that it meets the test of United States v. Bunkowski, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), i.e., it is found to be not just a physical amendment to the soil but a chemical amendment which alters and improves soil or plant chemistry.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without opportunity for hearing.

Mathern Lewis Stacy, 23 IBLA 166 (Dec. 24, 1975)

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

No discovery of a valuable mineral deposit is demonstrated on a placer mining claim which yields small amounts of gold from stream beds but which is suitable only for recreation mining because it could never be

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

expected to produce an economic return in any way commensurable with the labor and cost involved in such production.

United States v. Ruth Arcand et al., 23 IBLA 226 (Jan. 9, 1976)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

The Act of July 23, 1955, 30 U.S.C. § 611 (1970), removed common varieties of cinder from location under the mining laws; thus, it is incumbent upon one who located a claim prior to that date for a common variety of cinder to show that all the requirements for a discovery, including a showing that the materials could have been extracted, removed, and marketed at a profit, had been met by that date.

Material which is suitable only for fill purposes, road bases, or comparable uses is not locatable under the mining laws, and even if the material is suitable for other purposes, its sale for the above uses cannot be considered in determining its marketability to establish the value of the deposit as mineral. By the same token, it is improper to consider the market demand for such uses for the purpose of determining what volume of mineral material a prudent locator might claim in the reasonable anticipation of market demand for legitimate mineral uses in the foreseeable future, reasonably projected.

Where it has been shown as to a number of mining claims located for cinders for which application for patent has been filed, that the amount of the deposits on the claims is excessively large in relation to the market that exists, only those claims can be found valid which by reason of location and volume and quality of deposits would make the most feasible mining operation and have a reasonable prospect of success; the remaining claims must be held invalid for lack of discovery.

United States v. Pelton E. Baker, 23 IBLA 319 (Jan. 19, 1976)

The doctrine of collateral estoppel will not bar the administrative contest of the validity of five mining claims which, together with another claim, were the subject of previous condemnation actions for the taking of a temporary exclusive easement over the claims, where the issue of the validity of the individual claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance thereon, with the result that the claimant was thereby induced to do so, to his ultimate damage.

There can be no waiver of the Secretary's right to contest a mining claim believed to be invalid without a showing of an authority to make such a waiver and an intention to do so.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

In order to prove that stone containing feldspar used for landscaping and building stone purposes is not a common variety of stone under the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property, and (2) the unique property gives the deposit a distinct and special value. In the event the mining claimant does not establish that these criteria are met, the administrative law judge may properly hold that the stone cannot be classified as locatable under the mining laws because it is a common variety.

Ground feldspar, used as a soil conditioner or soil amendment, is not a locatable mineral deposit under the general mining laws in the absence of a showing that the mineral meets the test of *United States v. Bunkowski*, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), namely, that the mineral is found to be not just a physical amendment to the soil, but rather a chemical amendment which alters and improves soil or plant chemistry.

In order for a mining claim to be valid, there must be discovered within the limits of the claim a valuable mineral deposit. A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. This test, the prudent man rule, has been refined to require a showing that the mineral in question can be extracted, removed and presently marketed at a profit.

Where a mining claimant fails to submit adequate evidence as to the expected quantity and specifications of the local demand for industrial quality feldspar, does not receive any payment for inferior quality feldspar attempted to be sold for industrial use, and does not establish that the local market demand would justify the costs of developing a mill capable of processing industrial quality feldspar from the subject claim, the mining claimant has failed to satisfy the prudent man-marketability test which requires a showing that a reasonable prospect of success in developing a valuable mine exists. Where the anticipated costs and revenues of an alleged profitable mining operation are not based on reliable probative evidence, but only on mere speculation, a mining claim cannot be found valid.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

Lands within national parks are not subject to mining location except where specifically authorized by law. 43 CFR 3811.2-2. However, lands within a national forest remain open to location and entry under the mining laws. 16 U.S.C. § 478 (1970). Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of withdrawal for the national park by such a discovery, the land within the claims located in the park would not be excepted from the effect of the withdrawal.

Under Federal law, a valid mining location cannot be made without a discovery of a valuable mineral deposit within the limits of the claim. The longstanding test to determine whether there has been a discovery of a valuable mineral deposit is the "prudent man" test. To meet this test there must be sufficient mineralization within the claims to warrant a man of ordinary prudence to expend his time and means with a reasonable expectation of developing a valuable mine. For a lode claim, there must be tangible proof of the existence of a vein or veins bearing sufficient mineralization to meet the test.

Before a finding of discovery can be warranted, it must be shown as a present fact that the claim is valuable for minerals. Evidence of past profitable mining is not proof the claims are presently profitable. The claim may have been worked out or have lost its value because of change in economic conditions.

High assay samples alone are not evidence of a discovery. The nature of the samples yielding the high values must be considered. Where neither the date of the samples nor the nature of the samples submitted for assay is known, those assays cannot be considered as representative of a valuable mineral deposit within the limits of a mining claim.

A mining claimant's belief in the existence of mineral on a claim is not sufficient to constitute discovery. The prudent man rule imposes an objective standard, and the fact that the claimant may be willing to expend his labor and means is not adequate.

United States v. Wallace W. Vaux, 24 IBLA 265 (Apr. 1, 1976)

When a Government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made.

United States v. John H. Tarran, Jr., et al., 25 IBLA 1 (May 5, 1976)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit.

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

Under the mining law, discovery of a valuable mineral deposit is the *sine qua non* for a valid mining claim. Even if location of a mining claim appears not to be supported by discovery, a cloud is cast upon the United States' title, which the Government may seek to remove by bringing a contest to determine whether the claim is valid.

In a mining contest, the mining claimant is the proponent of a rule or order that he has complied with the mining laws entitling him to validation of the claim, and the claimant has the ultimate burden of proof. The Government has assumed the burden of going forward with sufficient evidence to establish a prima facie case of invalidity. When this has been done, the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

Occasional assay samples of material from a lode mining claim containing high values of gold are not conclusive evidence of a valid discovery. Other factors must be considered, such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values. To be meaningful, the samples must be representative of the mineral deposit, not simply selective showings of the best mineralization.

Before a finding of discovery of a valuable mineral deposit within a mining claim is warranted, it must be shown as a present fact that the claim is valuable for minerals. Evidence of past profitable mining is not proof the claims are presently profitable. The claim may have been worked out or have lost its value because of change in economic conditions.

Evidence of mineralization which may justify further exploration but not development of actual mining operations is not sufficient to establish that a discovery of a valuable mineral deposit has been made. The prudent man test is objective in nature. Therefore, a claimant's hopes and beliefs are not sufficient reasons to constitute a discovery. The facts must be such as would justify a prudent man to develop the claim.

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

A civil action in a Federal district court condemning a mining claim for a period of years for the exclusive use of the United States does not bar a subsequent contest by the Department of the Interior challenging the validity of the claim.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

To constitute a discovery upon a mining claim there must be physically exposed within the limits of the claim minerals in such quality and quantity to warrant a prudent man in expending his labor and means with a reasonable prospect of success in developing a valuable mine.

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

Where the Government contests a mining claim, official notice of a change in the published price of gold from that given at the hearing, as set forth in the evidence, may be taken by both the administrative law judge and the Board of Land Appeals, but official notice cannot be given to asserted "modern methods of extraction of gold."

United States v. Gold Placers, Inc., 25 IBLA 368 (July 6, 1976)

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim in order to add to retirement income. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy P. Cummins, 26 IBLA 223 (Aug. 17, 1976)

When the Government contests a mining claim, by practice it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Likewise, a millsite claimant has the burden of establishing the validity of his claim by a preponderance of the evidence.

A prima facie case of lack of discovery within a mining claim is established when a Government mineral examiner testifies that he has examined the claim and found mineralization insufficient to support a finding of discovery.

United States v. Alois A. Dietemann and Doris E. L. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Co., Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

Where a mineral examiner testifies on the basis of his examination of mining claims that the mineral values on the claims are insufficient to support a finding of discovery, a prima facie case against the validity of the claims has been established, and where the contestees walked out of the hearing and did not submit evidence to rebut the prima facie case, the claims must be declared invalid.

The Secretary of the Interior has the authority to determine the validity of mining claims upon adequate notice and opportunity for hearing.

United States v. Pine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

When, as a result of direct proceedings against mining claims, the Department determines that no discovery has been made, the claims must be declared null and void notwithstanding that they are located on land patented under the Stock-raising Homestead Act and the contest was privately initiated.

Cabot Sedgwick et al. v. C. R. Parker, 27 IBLA 256 (Oct. 20, 1976)

Where, at the hearing of a mining claim contest, the transcript of a previous hearing in another related contest is received in evidence, those portions of the transcript which are relevant and material to the case at hand may form, or contribute to, the basis for the decision in the case, regardless of which party introduced the transcript in evidence.

Material which is principally valuable for use as fill, sub-base or ballast, for which ordinary earth or rock may be used, is not locatable under the mining laws, and even if the material is suitable for other purposes, its value for the above uses cannot be considered in determining its marketability as a valuable mineral deposit within the ambit of the general mining law.

In a Government contest of the validity of a mining claim it is the claimants who are the true proponents of a rule or order, namely, that they have complied with the mining laws and have qualified to receive fee title to the land.

While the existence of other land values does not qualify a locator's rights under the mining law if he has a valid claim, evidence of such other values may be considered in assessing the weight and credibility to be accorded the locator's testimony in determining whether a discovery has been made, and may be a factor in evaluating his bona fide intention to develop a mining operation.

In determining whether a profitable market existed for material from a particular mining claim from which no material has been sold, a hypothetical market must be created in which the new material plays its part. The new material from the claim at issue must be included with that from all other known potentially competitive sources in calculating the factor of supply. If the supply so calculated amounts to a superabundance and so overwhelms the existing demand as to reduce the value or profit increment to a level below that which would prove attractive to a prudent man, the material cannot be said to be marketable at a profit.

United States v. J. R. Osborne et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

Under the mining law discovery of a valuable mineral deposit is the sine qua non for a valid mining claim. State mining laws relating to discovery may only add to the Federal mining law; such laws cannot diminish the Federal requirements for discovery of a valuable mineral deposit on a mining claim located on Federal lands.

In determining whether there has been a discovery of a valuable mineral deposit under the mining laws on a lode mining claim factors such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values must be considered.

United States v. Bradley B. Dunham, 29 IBLA 185 (Mar. 18, 1977)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

A mining claim is properly declared null and void where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

United States v. Chester L. Ramsey, 29 IBLA 243 (Mar. 25, 1977)

United States v. Wayne E. Highley, 30 IBLA 21 (Apr. 7, 1977)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

With respect to materials as common as sand and gravel, a mining claimant must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed and disposed of at a profit, and since common varieties were declared no longer locatable by the Act of July 23, 1955, 30 U.S.C. § 611 (1970), that a reasonably continuous market has existed from enactment of the statute.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976, has not been filed within 90 days from the date of location is void, and the Department may not accept or give force to a notice of recordation filed after the 90-day period.

Effect of Failure to Record Timely Under Sec. 314(b), Federal Land Policy and Management Act of 1976, M-36889, 84 I.D. 188 (May 17, 1977)

A mining claimant must prove a discovery under the prudent man test, including that the mineral can be extracted, removed and marketed at a profit.

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

United States v. Pittsburgh Pacific Co., 30 IBLA 388, 84 I.D. 282 (June 14, 1977)

Although the Government has assumed the burden of proof in mining claim contests of presenting a prima facie case of lack of discovery, once it has done so, the burden shifts to the claimant to prove by a preponderance of the evidence the discovery of a valuable mineral deposit. A prima facie case is established when a Government mineral examiner testifies that she examined the claim and could find no evidence showing the discovery of a valuable mineral deposit.

United States v. Gwendolyn McClure et al., 31 IBLA 8 (June 15, 1977)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Where the Government contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Where a Government mineral examiner testifies that he extensively examined the claims and workings thereon, and had assayed numerous samples taken from the claims but found no evidence of a valuable mineral deposit that would support a discovery, a prima facie case of lack of a mineral discovery has been made.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

United States v. Emma Elizabeth Conner, and Walter T. Nolte, as the Heirs of R. W. Speer, a Last Known Director of the Arlington Gold Mining Co. (Contestee), 31 IBLA 173 (July 5, 1977)

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without notice and an opportunity for hearing.

Cajon Minerals, Inc., 31 IBLA 188 (July 5, 1977)

There has been no discovery of a valuable mineral deposit within a mining claim where the evidence provides no basis for a reasonable expectation that minerals from the deposit can be mined, removed and marketed at a profit.

Past evidence of successful mining activity has limited probative value in determining whether there is a present discovery of a valuable mineral deposit on a mining claim, and assay reports can be given little weight when they are not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed in taking the sample.

United States v. Lee Nicholson et al., 31 IBLA 224 (July 7, 1977)

Mining claims located for deposits of common varieties of building stone, sand and gravel, if located prior to the Act of July 23, 1955, must be held to be invalid where it is not shown that these materials could have been profitably marketed prior to that date.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to such location, the Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Where the expert witnesses called by the Government testify that prior to July 23, 1955, there was no profitable market for common variety minerals from the subject claims and that it would have been economic folly to undertake the development a mine thereon, a prima

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

facie case of invalidity has been made. Thereafter, upon the failure of the claimant to prove the contrary by a preponderance of credible evidence, a determination that the claims are invalid is obligatory.

Where the contestee is seeking to validate a group of claims, he must prove that a valuable mineral deposit exists on each individual claim. A showing that all the claims taken as a group satisfy the requirements of discovery is not sufficient.

Where, in a contest to determine the validity of certain mining claims located for common building stone, sand and gravel, the Government charges that the claims were not located prior to the Act of July 23, 1955, which prohibited the subsequent location of such minerals, the finding by the Hearing Examiner and two administrative appellate tribunals that the charge is true and the claims were not timely located requires a holding that the claims are null and void, where such finding is supported by a preponderance of credible evidence.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

United States v. E. K. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of quartz, or other rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine. If more than one claim is contested, evidence establishing the existence, or nonexistence, of a discovery must be shown for each claim.

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

A prima facie case of lack of discovery of a valuable mineral deposit is established when a mineral examiner testifies for the United States that he examined each claim and could find no evidence showing the discovery of a valuable mineral deposit.

When a mineral examiner testifies for the United States that a discovery has not been made on a mining claim, his opinion must be based on a proper factual foundation. However, he is not required to perform discovery work, to explore or sample beyond a claimant's workings, or to excavate or rehabilitate any purportedly mineralized area which is concealed by overburden or is otherwise difficult of access. Under proper circumstances, the testimony of the mineral examiner may establish a prima facie case of lack of discovery even though he was not physically on each mining claim.

United States v. Robert A. Bakke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States, including lands within the National Forest System, after adequate notice and opportunity for hearing. A mining claim contest initiated under the authority of the Secretary of the Interior may be prosecuted by counsel employed by the Department of Agriculture acting on behalf of the Forest Service where such action is in accordance with a Memorandum of Understanding between the agencies.

A mining claim will be declared null and void where the Board's de novo review of the evidence submitted at a hearing, held in accordance with the provisions of the Administrative Procedure Act and presided over by an administrative law judge qualified under the Act, establishes that the claimant has not satisfied the requirements of discovery, and there was no error in the conduct of the proceeding.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of quartz, or other rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine.

Evidence in a mining claim contest showing only that further exploration might be warranted, is insufficient to establish the discovery of a valuable mineral deposit.

United States v. Lewis L. Wetherlin, Gabriele Wetherlin, 33 IBLA 86 (Dec. 8, 1977)

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744) has not been filed within 90 days from the date of location is void, and no force and effect can be given to a notice of recordation filed after the 90-day period.

Southwestern Exploration Associates, 33 IBLA 240 (Dec. 28, 1977)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

Andrew J. Van Derzool et al., 33 IBLA 288 (Jan. 5, 1978)

Where a contest complaint charges that no minerals of a variety subject to the mining laws sufficient in quality, quantity, and value to constitute a discovery are disclosed on a claim, and that the land embraced in the claim is nonmineral in character and the contestee fails to file an answer to the complaint in accordance with departmental regulations, the allegation of the complaint will be taken as admitted by the contestee and the claim is properly held null and void.

United States v. Ronda Biggs and Leslie Biggs, 33 IBLA 290 (Jan. 10, 1978)

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

United States v. Catherine B. Gay, 36 IBLA 148 (July 31, 1978)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

Roy L. Virg-in, 33 IBLA 354 (Jan. 16, 1978)

Failure to record mining claims in accordance with sec. 314 of the Federal Land Policy and Management Act of 1976 is deemed conclusively to constitute abandonment of the claims. Filing the recordation documents in a Bureau of Land Management District Office, rather than in the proper State Office, the day before the expiration of the 90-day statutory deadline for recordation does not constitute timely recordation. In such circumstances, the BLM State Office properly rejected the recordations upon receipt of the documents after the 90-day deadline had passed.

Irwin M. Sweeney, 34 IBLA 205 (Mar. 23, 1978)

A mining claimant must comply both with Federal law and with such State requirements as are not inconsistent with Federal mining provisions.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

What men have or have not done over a period of years is proper evidence as to the conduct of a prudent man in the same or very nearly the same circumstances. Where mining claims had been held for many years and little or no commercial production was achieved on such claims, it may be concluded that no prudent man would have been justified in the belief that the mineral deposit could be developed, extracted, and marketed at a reasonable profit.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C.A. § 1744 (Supp. 1978), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim located after Oct. 21, 1976, is void, and any later filing of the notice is invalid.

G. Antolini & Son, 37 IBLA 13 (Sept. 8, 1978)

William E. Rhodes, 38 IBLA 127 (Nov. 22, 1978)

To constitute a discovery on a mining claim, there must be shown to exist minerals of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a profitable mine.

A prima facie case has been made when a Government mineral examiner testifies that he has examined the claim and found evidence of mineralization insufficient to support a finding of a discovery.

United States v. Paul E. Fisher and Pearl E. Fisher, 37 IBLA 80 (Sept. 22, 1978)

Although in certain circumstances a rebuttable presumption of a mining claim's validity may be indulged, the presumption does not arise to support an application for patent of the fee title. The patent applicant is the movant party, and as such it is his obligation to make a satisfactory showing of his entitlement under the law and regulations.

Where a mineral patent application is supported by information sufficient to permit a mineral examination of the claims, but not sufficient for the adjudicator to approve the application for patent, he may properly call on the applicant for supplemental evidence to support the application. However, if the claimant fails to submit it, the adjudicator may not penalize such failure by summary rejection of the application for reasons relating to disputed issues of fact without notice and an opportunity for hearing.

Prattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

Material which is principally valuable for use as fill, sub-base, ballast, riprap or barrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. Verdugo & Miller, Inc., 37 IBLA 277 (Oct. 20, 1978)

Testimony that a mining claim could not presently be mined economically but may have economic potential and warrants further exploration work is insufficient to satisfy the prudent man test and meet the claimants' burden.

United States v. Loren E. Burns et al., 38 IBLA 53 (Nov. 20, 1978)

The "marketability test"--i.e., to qualify as a valuable mineral deposit, the mineral deposit must be extractable, removable and marketable at a profit--is a complement to the "prudent man rule." The fact that a mineral such as gold possesses intrinsic value does not prevent the application of the marketability test to determine whether the deposit of such a mineral constitutes a discovery of a valuable mineral deposit under the mining laws.

Once the Government has established a prima facie case that no discovery of a valuable mineral deposit has been made within a mining claim, the burden of proof shifts to the contestee to establish by a preponderance of the evidence the existence of a discovery.

United States v. Jack C. Harris, Jill L. Harris, 38 IBLA 137 (Nov. 29, 1978)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio in the absence of a showing that the claimants had a valid existing right to the claims which predates the withdrawal. Where claimants assert that they have simply filed amended notices of location of claims which were first located prior to the withdrawal, but the record indicates that the claims are in fact not the same as those located prior to the withdrawal, there is no valid existing right to the new claims, and they are properly declared null and void ab initio.

Riter Ekker, Kerry Ekker, 38 IBLA 277 (Dec. 13, 1978)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception.

W. Ted Hackett, 39 IBLA 28 (Jan. 11, 1979)

No discovery of a valuable mineral deposit is demonstrated where the amounts of mineral yielded by a claim are so small that mining could never be expected to produce an economic return in any way commensurate with the labor and cost involved in production.

United States v. Evelyn M. Higgins et al., 39 IBLA 88 (Jan. 26, 1979)

There has been no discovery of a valuable mineral deposit within a lode mining claim unless there has been physically exposed within the limits of the claim the vein or lode-bearing mineral of such quality and quantity as to justify the expenditure of money for the development of a mine and the extraction of the mineral.

In determining whether a claim has been validated by a discovery of a valuable mineral deposit, the Board of Land Appeals adheres to the longstanding distinction between evidence sufficient to warrant only further exploration to find a valuable mineral deposit and that which suffices to prove a discovery of a valuable mineral deposit.

In evaluating a mineral deposit within a mining claim geologic inference may be used where the deposit has been adequately physically exposed. However, geologic inference cannot be used as a substitute for evidence which sufficiently shows the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine; geologic inference may not be used to infer mineralization throughout a vein area where the evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous.

United States v. George B. Edeline et al., 39 IBLA 236 (Feb. 13, 1979)

Lands which were subject to an oil and gas lease offer on Sept. 20, 1951, were not open to mineral location, and mining claims located on such lands on this date are properly declared null and void in the absence of compliance with the redemption provisions of the Act of Aug. 12, 1953, and the Multiple Mineral Development Act, requiring filing of an amended notice of location prior to Dec. 10, 1953, in the place and manner in which the original notice was of record.

Dorothy Smith, 39 IBLA 306 (Feb. 23, 1979)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Gerald Byron Hanson, 40 IBLA 162 (Mar. 30, 1979)

Tilden Holloway, Roland Wright, 43 IBLA 138 (Sept. 26, 1979)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1744 (Supp. 1978), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim located after Oct. 21, 1976, is void, and any later filing of the notice is invalid.

Lawrence L. Landry, 40 IBLA 212 (Apr. 10, 1979)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. A notice must be received and date stamped in the BLM office within the 90-day period to be timely filed.

R. J. Reeves, 41 IBLA 92 (June 4, 1979)

Carl Cowles, Roy Stewart, 44 IBLA 192 (Nov. 30, 1979)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined as of the date of the withdrawal and through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

United States v. William Lance Cherrell et al., 42 IBLA 74 (Aug. 13, 1979)

Where a mining claimant attempts to establish his location of a mining claim containing common variety minerals by invoking the terms of 30 U.S.C. § 38 (1976) and fails to complete the statutory period for holding and working his claim prior to July 23, 1955, BLM may properly hold such claim to be null and void.

Charles Howze, Mrs. Leonard Skinner, 42 IBLA 364 (Sept. 11, 1979)

For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location. To the extent, however, that an amended location merely furthers rights acquired by a valid subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights will not prevent the amended location from relating back to the original location.

Since an amended notice merges with the original notice, the filing of the amended notice, for purposes of recordation under either sec. 8 of the Mining in the Parks Act, 90 Stat. 1342, 1343, 16 U.S.C. § 1907 (1976), or sec. 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 2769, 43 U.S.C. § 1744 (1976), together with such other information required by the applicable regulations, constitutes compliance with the recording requirements of those Acts.

Except for claims held under 30 U.S.C. § 38 (1976), a failure to record a mining claim as required by State law, coupled with a withdrawal of the land prior to any curative action, invalidates the claim, and thus precludes subsequent amendment of the claim.

An oral transfer of a mining claim, though contrary to the statute of frauds, will not serve to invalidate the claim, and a person subsequently seeking to record the claim will be afforded the opportunity to prove that the transfer actually occurred.

Where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. Gail Tibbetts et al., 43 IBLA 210 (Oct. 5, 1979)
86 I.D. 538

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. John D. Earl et al., 43 IBLA 363 (Oct. 29, 1979)

The collection of a yearly rental pursuant to the provisions of 43 CFR 3825.1(b) for a mining claim situated within the Papago Indian Reservation in no way presages the existence of a valid mining claim based on the discovery of a valuable mineral deposit.

United States v. J. C. Wilson, 44 IBLA 1 (Nov. 6, 1979)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the U.S. Forest Service and prosecuted by counsel employed by the U.S. Department of Agriculture, with U.S. Forest Service employees as witnesses.

A Government mineral examiner in evaluating a mining claim is not required to perform discovery work, to explore or sample beyond a claimant's workings and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner. While it is true that under proper circumstances, the testimony of the mineral examiner may establish a prima facie case of lack of discovery even though he was not physically on each mining claim, in the case at bar we need not decide whether a prima facie case was made by contestant since the totality of the evidence establishes invalidity of the claims.

The Board properly adopts a decision of an administrative law judge holding mining claims null and void for lack of discovery of certain minerals, i.e., gold, silver, iron, titanium, feldspar, mica, silica refractory clay, stonework clay, refractory sand and glass, where nondiscovery is established by the totality of the evidence.

United States v. Jon Siemers and Claire Kelly, 44 IBLA 162 (Nov. 30, 1979)

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Where there are factual questions relating to whether refilings subsequent to a withdrawal were in the nature of an "amended locations" or whether they constituted "relocations," the matter must be referred for a hearing to allow the claimant the opportunity to show that subsequent filings have been amended locations, and that it is thus the successor in an unbroken chain of title dating back to the original location.

American Resources, Ltd., 44 IBLA 220 (Dec. 11, 1979)

"Relocation." A relocation of a mining claim is best defined as a location adverse to the prior locations.

"Amended Location." An amended location of a mining claim is best defined as one in furtherance of an earlier, valid location, and a subsequent location referring to the same parcel of land, filed by the same party, changing only the name of the claim, will be deemed an amended location.

An "amended location" generally relates back, where no adverse rights have intervened, to the date of the original location, but where there has been a withdrawal, a subsequent location relates back only to the extent that such a location merely furthers rights acquired by a valid subsisting location and does not embrace additional or new land.

When on appeal from a Bureau of Land Management decision, information is submitted upon which it is alleged that a location relates back to a prewithdrawal location, which information has not been evaluated by BLM, the decision may be set aside and the case remanded.

James C. Knight, 44 IBLA 240 (Dec. 11, 1979)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to file such notice shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

Raymond E. Quigley, 44 IBLA 250 (Dec. 19, 1979)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

When the Government contests a mining claim, located on land withdrawn from mineral entry, the burden of presenting a prima facie case is satisfied by the testimony of a well qualified mineral examiner that he has examined the exposed workings on a claim without finding sufficient mineral values to support a conclusion there was a discovery of a valuable mineral deposit either at the time of the withdrawal or at the time of his inspections.

United States v. Cecilia Faccinelli, 44 IBLA 266 (Dec. 19, 1979)

Where a mineral patent application is supported by a mineral examination of the claim which finds a valid discovery and recommends issuance of a patent for a portion of the claim, the BLM may not summarily reject the application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Calcium Co., 44 IBLA 289 (Dec. 26, 1979)

DISCOVERY

Generally

To constitute a discovery upon a mining claim there must be physically exposed within the limits of the claim minerals in such quality and quantity to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Herbert Clark, 18 IBLA 368 (Jan. 30, 1975)

A discovery exists where minerals have been found within the limits of a claim and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

United States v. Gerald E. Heden et al., 19 IBLA 326 (Apr. 7, 1975)

To determine whether there has been a discovery of a valuable mineral deposit within a lode claim there must be exposed within the limits of the claim a vein or lode bearing mineral of such quality and quantity as would induce a prudent man to expend his time and means with the expectation of developing a valuable mine.

United States v. Kinsley Ranch Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuble mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

the value of the deposit thereafter increased due to a change in the market.

United States v. E. E. Fleming et al., 20 IBLA 83 (Apr. 28, 1975)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a profitable mine.

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Charles J. McIver et al., 20 IBLA 352 (June 11, 1975)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

United States v. C. E. Dallenbach et al., 21 IBLA 256 (Aug. 11, 1975)

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

When the Government contests a mining claim and establishes a prima facie case that contestee has not made a discovery of a locatable mineral deposit, the burden devolves on contestee to establish by a preponderance of the evidence that the claim has been validated by the discovery of a locatable mineral deposit.

Marketability of mineral material is not the sole test of the validity of a mining claim. Profitable sales of mineral material for nonvalidating uses cannot be used in determining the validity of a mining claim; the claimant must meet the prudent man/marketability test in a market for which the material is locatable.

United States v. Thomas D. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

Under proper circumstances the Government may establish a prima facie case of lack of discovery of a valuable mineral deposit on a mining claim, even though the Government mineral examiner was not physically present on such claim. Where there is no evidence to rebut the prima facie case, a mining claim may properly be declared null and void.

United States v. Long Beach Salt Co., 23 IBLA 41 (Dec. 3, 1975)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

No discovery of a valuable mineral deposit is demonstrated on a placer mining claim which yields small amounts of gold from stream beds but which is suitable only for recreation mining because it could never be expected to produce an economic return in any way commensurable with the labor and cost involved in such production.

United States v. Ruth Arcand et al., 23 IBLA 226 (Jan. 9, 1976)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where it has been shown as to a number of mining claims located for cinders for which application for patent has been filed, that the amount of the deposits on the claims is excessively large in relation to the market that exists, only those claims can be found valid which by reason of location and volume and quality of deposits would make the most feasible mining operation and have a reasonable prospect of success; the remaining claims must be held invalid for lack of discovery.

United States v. Melvin J. Baker, 23 IBLA 319 (Jan. 19, 1976)

A lode mining claim is properly declared null and void in the absence of a showing of a discovery, on the particular claim, of a lode or vein bearing mineral which would warrant a prudent man in further expenditure of labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

When the Government contests a mining claim, it has assumed the burden of presenting a prima facie case that the claim is invalid; when it has done so, the burden then devolves on the mining claimant to prove by a preponderance of the evidence that the claim is valid.

In order for a mining claim to be valid, there must be discovered within the limits of the claim a valuable mineral deposit. A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. This test, the prudent man rule, has been refined to require a showing that the mineral in question can be extracted, removed and presently marketed at a profit.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

To constitute a discovery of a valuable mineral deposit under the mining laws, there must be sufficient mineralization shown to warrant a prudent man to invest his time and money with the reasonable expectation of developing a valuable mine.

United States v. George F. Edelins et al., 24 IBLA 34 (Feb. 17, 1976)

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Gary C. Fichtner et al., 24 IBLA 128 (Mar. 3, 1976)

Lands within national parks are not subject to mining location except where specifically authorized by law. 43 CFR 3811.2-2. However, lands within a national forest remain open to location and entry under the mining laws. 16 U.S.C. § 478 (1970). Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of withdrawal for the national park by such a discovery, the land within the claims located in the park would not be excepted from the effect of the withdrawal.

Under Federal law, a valid mining location cannot be made without a discovery of a valuable mineral deposit within the limits of the claim. The longstanding test to determine whether there has been a discovery of a valuable mineral deposit is the "prudent man" test. To meet this test there must be sufficient mineralization within the claims to warrant a man of ordinary prudence to expend his time and means with a reasonable expectation of developing a valuable mine. For a lode claim, there must be tangible proof of the existence of a vein or veins bearing sufficient mineralization to meet the test.

Before a finding of discovery can be warranted, it must be shown as a present fact that the claim is valuable for minerals. Evidence of past profitable mining is not proof the claims are presently profitable. The claim may have been worked out or have lost its value because of change in economic conditions.

High assay samples alone are not evidence of a discovery. The nature of the samples yielding the high values must be considered. Where neither the date of the samples nor the nature of the samples submitted for assay is known, those assays cannot be considered as representative of a valuable mineral deposit within the limits of a mining claim.

A mining claimant's belief in the existence of mineral on a claim is not sufficient to constitute discovery. The prudent man rule imposes an objective standard, and the fact that the claimant may be willing to expend his labor and means is not adequate.

United States v. Wallace W. Yaus, 24 IBLA 289 (Apr. 1, 1976)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

A mining claim contested under sec. 5 of the Surface Resources Act, as amended, 30 U.S.C. § 613 (1970), and a discrete claim contested under the general mining law, will be held subject to the provisions of the Surface Resources Act, and null and void respectively, where the contestees fail to submit evidence which preponderates over the Government's case that a discovery of a valuable mineral deposit has not been made on either claim.

United States v. Sigma Lasch et al., 24 IBLA 354 (Apr. 26, 1976)

Evidence of mineralization which may justify further exploration, but not development of a mine, does not establish the discovery of a valuable mineral deposit.

State mining laws relating to discovery may only add to the Federal mining law; such laws cannot diminish the Federal requirements for the discovery of a valuable mineral deposit on a mining claim located on Federal lands.

United States v. John R. Tappan, Jr., et al., 25 IBLA 1 (May 5, 1976)

The discovery of a "valuable mineral deposit" has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence which will not justify development of a claim but may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

Under the mining law, discovery of a valuable mineral deposit is the sine qua non for a valid mining claim. Even if location of a mining claim appears not to be supported by discovery, a cloud is cast upon the United States' title, which the Government may seek to remove by bringing a contest to determine whether the claim is valid.

The "prudent man" test is the longstanding test to determine whether there has been a discovery of a valuable mineral deposit. To meet this test there must be sufficient mineralization within a claim to warrant a man of ordinary prudence to expend his time and means with a reasonable expectation of developing a valuable mine.

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

Occasional assay samples of material from a lode mining claim containing high values of gold are not conclusive evidence of a valid discovery. Other factors must be considered, such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values. To be meaningful, the samples must be representative of the mineral deposit, not simply selective showings of the best mineralization.

In determining whether there has been a discovery of a valuable mineral deposit under the mining laws, the mere showing of a vein (or veins) carrying some erratic mineral values is not sufficient to establish a valuable mineral deposit where the existence of such a deposit can only be inferred. Geological inferences may only be relied upon in evaluating the extent and potential value of a particular exposed mineral deposit under the prudent man test of discovery and may not be employed as a substitute for the actual finding of a mineral deposit.

Before a finding of discovery of a valuable mineral deposit within a mining claim is warranted, it must be shown as a present fact that the claim is valuable for minerals. Evidence of past profitable mining is not proof the claims are presently profitable. The claim may have been worked out or have lost its value because of change in economic conditions.

Evidence of mineralization which may justify further exploration but not development of actual mining operations is not sufficient to establish that a discovery of a valuable mineral deposit has been made. The prudent man test is objective in nature. Therefore, a claimant's hopes and beliefs are not sufficient reasons to constitute a discovery. The facts must be such as would justify a prudent man to develop the claim.

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

United States v. Alex Bechtold, 25 IBLA 77 (June 1, 1976)

As a prerequisite for the validity of a lode mining claim, there must be found within the limits of the claim a vein or lode of the quartz, or other rock in place, bearing mineral of such quantity and quality that a prudent person would expend his time and means with a reasonable prospect of success in developing a valuable mine. Evidence which merely shows that further exploration is needed to "discover" the valuable mineral deposit does not meet the prudent man test.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

To constitute a discovery upon a mining claim there must be physically exposed within the limits of the claim minerals in such quality and quantity to warrant a prudent man in expending his labor and means with a reasonable prospect of success in developing a valuable mine.

United States v. Gold Placers, Inc., 25 IBLA 368 (July 6, 1976)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

A discovery of a valuable mineral deposit may be lost in many ways including, but not limited to, forgetting

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

the situs of the deposit, exhaustion of the deposit, or loss of a market for the mineral.

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim in order to add to retirement income. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

A lode mining claim is properly declared null and void in the absence of a showing of a discovery on the claim of a lode or vein bearing mineral which would warrant a prudent man to further expend his labor and means in the reasonable expectation of developing a valuable mine.

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Ben Hanson, 26 IBLA 300 (Aug. 27, 1976)

United States v. Estate of M. E. Wood, 34 IBLA 44 (Feb. 16, 1978)

In order to constitute a discovery upon a mining claim there must be physically exposed within the limits of the claim minerals in such quality and quantity as to justify a prudent man in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

A Government mineral examiner in evaluating a mining claim is under no duty to undertake discovery work or to explore beyond the current workings of a claim and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner.

United States v. Aloys A. Dietemann and Doris A. L. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Minerals which no prudent person will extract because there is no demand for them at a higher price than the cost of extraction and transportation generally cannot be classed as valuable.

United States v. Arizona Mining and Refining Co., Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a profitable mine.

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

When, as a result of direct proceedings against mining claims, the Department determines that no discovery has been made, the claims must be declared null and void notwithstanding that they are located on land patented under the Stock-raising Homestead Act and the contest was privately initiated.

Cabot Sedgwick et al. v. C. E. Parker, 27 IBLA 256 (Oct. 20, 1976)

When the Government has presented a prima facie case of lack of discovery of a valuable mineral deposit on a mining claim, the mining claimant then has the burden of establishing by a preponderance of the evidence that the discovery test has been met. Consequently, the ultimate burden of proving discovery is always upon the mining claimant.

United States v. George J. Hunt and A. P. Goodwin, 29 IBLA 86 (Feb. 23, 1977)

Under the mining law discovery of a valuable mineral deposit is the sine qua non for a valid mining claim. State mining laws relating to discovery may only add to the Federal mining law; such laws cannot diminish the Federal requirements for discovery of a valuable mineral deposit on a mining claim located on Federal lands.

In determining whether there has been a discovery of a valuable mineral deposit under the mining laws on a lode mining claim factors such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values must be considered.

United States v. Bradley P. Lemke, 29 IBLA 165 (Mar. 18, 1977)

High assay reports alone are not evidence of a discovery. The nature of the samples yielding the high values must be considered. Where neither the date of the samples nor the nature of the samples submitted for assay is known, those assays cannot be considered as representative of a valuable mineral deposit within the limits of the mining claim.

Reports of substantial mineral discoveries in the general area of contestee's placer claim some 120 years in the past are of little, if any, significance in establishing the existence of a present discovery on the contested claim.

United States v. John L. Maley and James B. Lanel, 29 IBLA 201 (Mar. 22, 1977)

A lode mining claim for barite is properly declared null and void in the absence of a showing of a discovery on the claim of a deposit of barite which would warrant a prudent man in further expending his labor and means in the reasonable expectation of developing a valuable mine. Evidence of mineralization which may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Howard S. McKenzie, 29 IBLA 270 (Mar. 28, 1977)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

A valuable mineral deposit is an accumulation of a valuable mineral in such quantity and such quality that a person would be justified in expending his time and means in a reasonable hope of developing a valuable mine.

Where land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; then the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

In applying the prudent man test of discovery, the cost of extraction, processing and transportation to market of the recovered mineral must be considered because these costs bear on whether a person of ordinary prudence would be justified in the further expenditure of his time and means to develop a valuable mine.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

A valuable mineral deposit is an accumulation of a mineral in such quantity and such quality that a person would be justified in expending his time and means in a reasonable hope of developing a valuable mine.

Where land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; then the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

In applying the prudent man test of discovery, the cost of extraction, processing and transportation to market of the recovered mineral must be considered because these costs bear on whether a person of ordinary prudence would be justified in the further expenditure of his time and means to develop a valuable mine.

Evidence of mineralization which may justify further exploration, but not the development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Richard E. Wells, 30 IBLA 333 (June 7, 1977)

A mining claimant must prove a discovery under the prudent man test, including that the mineral can be extracted, removed and marketed at a profit.

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

United States v. Pittsburgh Pacific Co., 30 IBLA 388, 84 I.D. 282 (June 15, 1977)

In order to support the validity of a mining claim, the claimant must show that he has discovered a mineral deposit and that the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine. The fact that some minerals may exist which might justify further exploration on the claim is insufficient to show a discovery of a valuable mineral deposit.

United States v. Gwendolyn McClure et al., 31 IBLA 1 (June 15, 1977)

The "prudent man" test is the longstanding test to determine whether there has been a discovery of a valuable mineral deposit. To meet this test there must be sufficient mineralization within a claim to warrant a man of ordinary prudence to expend his time and means with a reasonable expectation of developing a valuable mine.

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

United States v. Vera Elizabeth Cooper, and Walter I. Welty, as the Heirs of H. W. Street, a last known director of the Arlington Gold Mining Co. (Contestees), 31 IBLA 173 (July 5, 1977)

There has been no discovery of a valuable mineral deposit within a mining claim where the evidence provides no basis for a reasonable expectation that minerals from the deposit can be mined, removed and marketed at a profit.

Past evidence of successful mining activity has limited probative value in determining whether there is a present discovery of a valuable mineral deposit on a mining claim, and assay reports can be given little weight when they are not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed in taking the sample.

United States v. Lee Nicholson et al., 31 IBLA 174 (July 7, 1977)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

been made and still exists within the limits of the claim.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

United States v. Clark J. Guild et al., 34 IBLA 387 (May 3, 1978)

United States v. Don Lee Seto and Pauline Seto, 35 IBLA 4 (May 3, 1978)

United States v. John A. Cooley, 43 IBLA 276 (Oct. 15, 1979)

Where the contestee is seeking to validate a group of claims, he must prove that a valuable mineral deposit exists on each individual claim. A showing that all the claims taken as a group satisfy the requirements of discovery is not sufficient.

United States v. Frank and Wanita Melluzzo (Supp. on Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

The "marketability rule" requiring a demonstration of present marketability at a profit is (and always has been) applicable to all mining claims, whether for base metals or for precious minerals.

A locator of a mining claim on public land has taken only the initial step in seeking to secure a gratuity from the Government and obtains no rights against the United States until there has been a discovery of a valuable mineral deposit within the limits of the claim.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of quartz, or other rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine. If more than one claim is contested, evidence

establishing the existence, or nonexistence, of a discovery must be shown for each claim.

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as by the creation of the North Cascades National Park on Oct. 2, 1968, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Robert A. Bykke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

A discovery of a valuable mineral deposit has been made where minerals have been found within the limits of a claim and the evidence is such that a person of ordinary prudence would be justified in the further expenditure of his labor and means in a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

A Government mineral examiner in evaluating a mining claim is under no duty to undertake discovery work or to explore beyond the current workings of a claim and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Proposed testimony of a witness as to the procedures that would be followed by a person in private industry in making a complete evaluation of a mining claim is properly excluded as irrelevant because it does not have a logical relation to the type of an examination made by a Government mineral examiner to establish the facts on which the validity or invalidity of a mining claim may be determined.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. John C. Morton et al., 32 IBLA 263 (Sept. 27, 1977)

The fact that some minerals exist which might justify further exploration on the claim is insufficient to show a valuable mineral deposit.

In applying the prudent man test of discovery, the cost of extraction, processing and transportation to market of the recovered mineral must be considered because these costs bear on whether a person of ordinary prudence would be justified in the further expenditure of his time and means to develop a valuable mine.

United States v. Ernest F. Liven and Richard J. S. Anderson, 32 IBLA 361 (Oct. 25, 1977)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of quartz, or other rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a paying mine.

Evidence in a mining claim contest showing only that further exploration might be warranted, is insufficient to establish the discovery of a valuable mineral deposit.

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as the Organ Pipe Cactus National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Lewis L. Wetherlin, Gabriele Wetherlin, 33 IBLA 86 (Dec. 8, 1977)

A discovery of a valuable mineral deposit has been made where minerals have been found within the limits of a claim and the evidence is such that a person of ordinary prudence would be justified in the further expenditure of his labor and means in a reasonable prospect of success in developing a valuable mine.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, *i.e.*, a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

A Government mineral examiner in evaluating a mining claim is under no duty to undertake discovery work or to explore beyond the current workings of a claim and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner.

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

A Government mineral examiner, versed in mining engineering and/or geology is qualified to evaluate a mining claim for a particular mineral even though he does not possess specific experience as to that mineral.

United States v. Doris Conger Caldwell, 33 IBLA 153 (Dec. 19, 1977)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

Andrew J. Van Derpoel et al., 33 IBLA 288 (Jan. 5, 1978)

A discovery of a valuable mineral deposit is not made unless minerals have been found on a claim, the evidence of them is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine, and the deposit may be perceived by a prudent man as susceptible to extraction, removal and marketing at a reasonable profit.

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

A valuable discovery of a mineral deposit is established where a claimant, by a preponderance of the evidence, establishes the presence of mineralization which would justify a prudent man in expending his labor, time, and money on the claim with an expectation of developing a valuable mine.

United States of America v. David L. King et al., 34 IBLA 15 (Feb. 10, 1978)

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

A Government mineral examiner has no duty to explore beyond the claimant's current workings to verify a mineral discovery.

To establish a discovery, a claimant must show more than that a prudent man would explore the claim further. The claimant must show that a valuable mineral deposit has been physically exposed, and may not rely on the mere speculation that a valuable deposit will be exposed somewhere on the claim.

To satisfy the prudent man test, it must be shown that the expected returns from working a mining claim are commensurate with the compensation an ordinary person would expect from his labor. The subjective willingness of a claimant to subsist on a substandard income in order to work the claim does not satisfy the test where the claimant received welfare payments and grew his own food in order to survive.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

A discovery exists only where minerals have been found in quantities such that a person of ordinary prudence would be justified in the further expenditure of his labor and means with the reasonable expectation of developing a valuable mine.

When the Government through the testimony of an expert mineral examiner has alleged a lack of valuable mineralization, the burden of showing the contrary by a preponderance of the evidence shifts to the contestees.

Isolated showings of high sample values and assays will not, without more, support a claim of discovery.

United States v. Richard B. Kingdon and Edith F. Kingdon, 36 IBLA 11 (June 27, 1978)

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Where the claimant presents evidence of returns which are so meager that they will not attract the labor and means of a person of ordinary prudence, he has failed to prove by a preponderance of the evidence that his claim is valid, and it is properly declared null and void.

United States v. Joseph Larsen and Ferris Larsen. 36 IBLA 130 (July 25, 1978)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

This Department has authority and jurisdiction to contest mining claims on the ground that they are invalid for lack of a discovery of a valuable mineral deposit, regardless of whether any other use of the land is being made or sought. The motivation of the Forest Service in instigating a contest is irrelevant.

United States v. Catherine E. Gay. 36 IBLA 148 (July 31, 1978)

Discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of validity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. Florence J. Mattox, 36 IBLA 171 (July 31, 1978)

United States v. Emmett C. Harder, 42 IBLA 206 (Aug. 22, 1979)

A discovery of a valuable mineral deposit is not made unless minerals have been found on a claim, the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine, and the deposit may be perceived by a prudent man as susceptible to extraction, removal and marketing at a reasonable profit.

United States v. Wesley C. Miles, Sr., 36 IBLA 213 (Aug. 3, 1978)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

In a mining claim contest, no weight will be given to claimant's allegation that the Government's mineral examiner failed to sample the discovery point or the best mineral showings, where the claimant was invited to indicate his discovery to the examiner and failed to do so, and where he also failed to introduce convincing evidence of his own that a discovery had been made.

A Government mineral examiner in evaluating a mining claim is under no duty to undertake discovery work or to explore beyond the current workings of a claim and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner.

United States v. Larry Joseph Tipp, 36 IBLA 316 (Aug. 23, 1978)

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, *i.e.*, a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

United States v. Clayton A. Dillman and Jean E. Dillman, 36 IBLA 358 (Aug. 31, 1978)

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

In mining claim contest, Government must only go forward with evidence to establish prima facie case of no discovery of valuable mineral deposits, and burden then shifts to mining claimant to prove by preponderance of evidence that his claim is valid.

Where contestee has not produced substantial evidence in respect to quantity of iron oxide ore existing on claims, or in respect to whether ore can be extracted and marketed at profit, contestee has not proved that person of ordinary prudence would be justified in further expenditure of his labor and means, with reasonable prospect of success, in developing valuable mine.

United States v. Michael D. Marion, 37 IBLA 68 (Sept. 18, 1978)

To constitute a discovery on a mining claim, there must be shown to exist minerals of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a profitable mine.

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery and is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case.

United States v. Paul P. Fisher and Ruel E. Fisher, 37 IBLA 80 (Sept. 22, 1978)

A discovery exists only where minerals have been found in such quantities that a person of ordinary prudence would be justified in the further expenditure of his labor and means with the reasonable expectation of developing a valuable mine.

When the Government through the testimony of an expert mineral examiner has alleged a lack of valuable mineralization, the burden of showing the contrary by a preponderance of the evidence shifts to the contestees.

The value of common varieties of sand and gravel not locatable under the mining laws cannot be considered in the evaluation of the value of placer gold to determine whether there has been a discovery of a valuable deposit of gold on a contested mining claim, where it is clear that the mineral claimants made no discovery of a valuable mineral deposit prior to July 23, 1955.

United States v. Gaylord Lambeth et al., 37 IBLA 107 (Sept. 29, 1978)

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of proving a discovery onto the mining claimant, when an expert witness testifies that he has examined the claim and has found the mineral values insufficient to support a finding of discovery.

It is incumbent upon the mining claimant, not the Government's mineral examiner, to do that amount of work which is necessary to discovery a valuable mineral deposit.

Assay reports have limited probative value as to the existence of a valuable mineral deposit on a mining claim when they are not supported by evidence as to how and where the samples were taken.

United States v. John S. Porter, 37 IBLA 313 (Oct. 25, 1978)

A discovery of a valuable mineral deposit has been made where minerals have been found in sufficient quantity and quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Testimony that a mining claim could not presently be mined economically but may have economic potential and warrants further exploration work is insufficient to satisfy the prudent man test and meet the claimants' burden.

United States v. Loren E. Burns et al., 38 IBLA 57 (Nov. 20, 1978)

The Government is entitled to determine whether a valuable mineral deposit exists on a mining claim, in order to decide whether to initiate a contest complaint challenging the validity of the claim, prior

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

to the completion of mineral exploration by the mining claimant.

United States v. Lost Polack Mining Ass'n, 38 IBLA 101 (Nov. 20, 1978)

The "marketability test"--i.e., to qualify as a valuable mineral deposit, the mineral deposit must be extractable, removable and marketable at a profit--is a complement to the "prudent man rule." The fact that a mineral such as gold possesses intrinsic value does not prevent the application of the marketability test to determine whether the deposit of such a mineral constitutes a discovery of a valuable mineral deposit under the mining laws.

United States v. Jack C. Harris, Jill L. Harris, 38 IBLA 137 (Nov. 29, 1978)

A discovery exists only where minerals have been found in quantities such that a person of ordinary prudence would be justified in the further expenditure of his labor and means with the reasonable expectation of developing a valuable mine.

A prudent man would be justified in expending his labor and means in developing an unpatented mining claim only where it appears that the mineralization on the claim in question is valuable enough to yield a fair market value in excess of the costs of its extraction, removal, and sale.

When the Government through the testimony of an expert mineral examiner has alleged a lack of valuable mineralization, the burden of showing the contrary by a preponderance of the evidence shifts to the contestees.

Isolated showings of high assay values will not suffice to establish a discovery, especially where the claimants have attempted little or no development of the alleged mineral discovery.

The sale of decorative building stone from the surface of a lode mining claim cannot support a claimant's contention that a valuable mineral discovery has been made on such lode claim, decorative stone being locatable only under the provisions of the placer mining laws, 30 U.S.C. § 161 (1976), and only where such stone is shown to be an "uncommon variety" within the meaning of 30 U.S.C. § 611 (1976).

United States v. Frank and Wanita Melluzzo, 38 IBLA 214 (Dec. 7, 1978) 85 I.D. 441

To determine whether there has been a discovery of a valuable mineral deposit within a lode claim there must be exposed within the limits of the claim a vein or lode bearing mineral of such quality and quantity as would induce a prudent man to expend his time and means with the expectation of developing a valuable mine.

Evidence of mineralization which may justify further exploration, but not development of a mine, does not establish the discovery of a valuable mineral deposit.

No discovery of a valuable mineral deposit is demonstrated where the amounts of mineral yielded by a claim are so small that mining could never be expected to produce an economic return in any way commensurate with the labor and cost involved in production.

United States v. Evelyn M. Kiggins et al., 39 IBLA 88 (Jan. 26, 1979)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

There has been no discovery of a valuable mineral deposit within a lode mining claim unless there has been physically exposed within the limits of the claim the vein or lode-bearing mineral of such quality and quantity as to justify the expenditure of money for the development of a mine and the extraction of the mineral.

In determining whether a claim has been validated by a discovery of a valuable mineral deposit, the Board of Land Appeals adheres to the longstanding distinction between evidence sufficient to warrant only further exploration to find a valuable mineral deposit and that which suffices to prove a discovery of a valuable mineral deposit.

In evaluating a mineral deposit within a mining claim geologic inference may be used where the deposit has been adequately physically exposed. However, geologic inference cannot be used as a substitute for evidence which sufficiently shows the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine; geologic inference may not be used to infer mineralization throughout a vein area where the evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous.

United States v. George B. Edeling et al., 39 IBLA 236 (Feb. 13, 1979)

The purpose of 30 U.S.C. § 38 (1976) whereby a person or association may establish a right to patent lands which said person or association has held and worked for a period equal to the statute of limitations is to obviate the necessity of proving formal compliance with requirements for locating a claim, but not to dispense with proof of discovery.

United States v. Leroy S. Johnson et al., 39 IBLA 337 (Feb. 28, 1979)

A placer mining claim is valid only where there has been discovered within the limits of the claim a valuable mineral deposit.

After the Government, through expert testimony of its mineral examiner, has made a prima facie showing that no discovery exists, the burden of going forward with a preponderance of evidence to the contrary falls upon contestees.

United States v. Cecil F. Ross, Jr., 40 IBLA 169 (Apr. 3, 1979)

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of going forward, when an expert witness testified that he has examined the claim and has found the mineral value insufficient to support a finding of discovery.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

To establish a discovery of a valuable mineral deposit, a claimant must show more than that a prudent man would explore the claim further. The claimant must show that

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

a valuable mineral deposit has been physically exposed within the limits of the claim.

United States v. Tempest Mining Co., 40 IBLA 297 (Apr. 27, 1979)

A Government mineral examiner in evaluating a mining claim is under no duty to undertake discovery work or to explore beyond the current workings of a claim and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit.

United States v. Dan S. Russell, 40 IBLA 309 (Apr. 30, 1979)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

The "prudent man test" is met only where it appears that the mineralization on the claim has been physically exposed and is valuable enough to yield a fair market value in excess of the costs of extraction, removal, and sale. Evidence of mineralization which would justify further exploration, but not development, does not suffice to meet the discovery requirement.

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined as of the date of the withdrawal and through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

United States v. William Lavon Chappell et al., 42 IBLA 74 (Aug. 13, 1979)

Discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Discovery of gold sufficient to support a mining claim must be made on the claim itself, notwithstanding discovery of gold on nearby land which might persuade a reasonable prospector to continue his search for a valuable mineral deposit on the claim.

United States v. Edward T. McHenry et al., 43 IBLA 122 (Sept. 26, 1979)

A discovery of valuable mineral exists where the claim contains mineralization of sufficient quality and quantity to justify further expenditure of labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

Minute amounts of mineralization may justify further exploration without establishing discovery.

United States v. Ted G. Ax, 43 IBLA 146 (Sept. 26, 1979)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

The "prudent man test" is met only where it appears that the mineralization on the claim has been physically exposed and is valuable enough that with actual mining operations under proper management a profitable venture may reasonably be expected to result.

Assay reports have limited probative value as to the existence of a valuable mineral deposit on a mining claim when they are not supported by evidence as to how and where the samples were taken.

United States v. John R. Port et al., 43 IBLA 363 (Oct. 29, 1979)

A discovery of valuable mineral exists where the claim contains mineralization of sufficient quality and quantity to justify further expenditure of labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

When land is withdrawn from mining location after a mining claim has been located thereon, the claimant must show that discovery of a valuable mineral deposit occurred *prior* to the withdrawal in order to establish rights against the Government.

United States v. Ralph Page et al., 43 IBLA 390 (Oct. 31, 1979)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

A discovery of a valuable mineral deposit has been made where locatable minerals have been found within the limits of a claim and the evidence is such that a person of ordinary prudence would be justified in the further expenditure of his labor and means in a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Jon Ziemers and Claire Kelly, 44 IBLA 142 (Nov. 30, 1979)

When the Government contests a mining claim on a charge of no discovery of a valuable mineral deposit it assumes the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

It is incumbent upon the mining claimant, not the Government's mineral examiner, to do that amount of work which is necessary to discover a valuable mineral deposit.

United States v. Knox-Arizona Corp., 44 IBLA 297 (Dec. 31, 1979)

Geologic Inference

Nonrepresentative mineral samples alone cannot prove the existence of valuable mineralization exposed within a vein. If, however, other evidence establishes such mineralization, the samples may be given some weight to support geological inferences of the value of a lode mining claim.

United States v. Kinsley Ranch Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

Geologic inference alone cannot support a determination under the mining laws that a discovery of a valuable mineral deposit has been made. The claimant must actually expose a valuable mineral deposit physically within the limits of the claim.

United States v. Wallace W. Vaux, 24 IBLA 289 (Apr. 1, 1976)

United States v. Richard R. Wells, 30 IBLA 333 (June 7, 1977)

MINING CLAIMS--Continued

DISCOVERY--Continued

Geologic Inference--Continued

In determining whether there has been a discovery of a valuable mineral deposit under the mining laws, the mere showing of a vein (or veins) carrying some erratic mineral values is not sufficient to establish a valuable mineral deposit where the existence of such a deposit can only be inferred. Geological inferences may only be relied upon in evaluating the extent and potential value of a particular exposed mineral deposit under the prudent man test of discovery and may not be employed as a substitute for the actual finding of a mineral deposit.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

Geological inferences may not alone be used to establish a discovery of a valuable mineral deposit, but if there is a showing of sufficient mineralization and there is satisfactory evidence to support such inferences, they may be used as a basis for estimating the probable extent and value of the mineral deposit.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

In evaluating a mineral deposit within a mining claim geologic inference may be used where the deposit has been adequately physically exposed. However, geologic inference cannot be used as a substitute for evidence which sufficiently shows the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine; geologic inference may not be used to infer mineralization throughout a vein area where the evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous.

United States v. George B. Edeline et al., 39 IBLA 236 (Feb. 13, 1979)

Marketability

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man/marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

The marketability refinement of the prudent man test of discovery requires that the mineral locator must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the mineral deposit is of such value that it can be mined, removed and disposed of at a profit.

In making a prima facie case in a mining contest involving a common variety of material, it is only essential for the Government to establish that the contestees had not prior to July 23, 1955, met the criteria used in determining marketability at a profit. It is not essential that the Government's evidence prove conclusively that the material could not, in fact, be marketed at a profit, but only that it was not sold or marketed. The Government is not required to do the discovery work upon a mining claim; it is only necessary that the exposed areas of a claim and the workings on a claim be examined to verify if a discovery has been made by the mining claimant.

In determining the marketability of a common variety of sand and gravel from a mining claim, the possibility that the material could be sold for purposes for which ordinary earth may be used may not be considered, as such purposes are not validating uses cognizable under the mining laws.

A mining claim located for a common variety of gravel prior to the Surface Resources Act of July 23, 1955, cannot be sustained as being held as a reserve for the gravel deposit where the claimants had not established a discovery under the marketability test at that time. The "reserve rule" is not a substitute for discovery. A mining claimant's desire to hold a claim in hope that there will be an increase in the market demand and price does not satisfy the marketability test.

A conjectural opinion on the possibility of a mining claimant's ability to market a common variety of gravel at a profit prior to July 23, 1955, is not credible evidence of marketability where specific evidence tends to show that development of a mining operation at that time was not then warranted by the marketplace conditions.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

A lack of sales of a mineral of widespread occurrence, such as sand and gravel, may raise a presumption that there was no demand for the mineral during that time, and, hence, the material was not marketable. The presumption may be overcome with credible evidence to the contrary or by bona fides in development.

United States v. C. V. Hallenbeck et al., 21 IBLA 296 (Aug. 11, 1975)

A bog iron ore deposit does not meet the prudent man/ marketability test where the evidence shows that contestee could only develop the iron deposit for sale for metallurgical uses after further exploration to establish a higher grade or greater tonnage of ore, or upon future favorable developments in the iron ore market.

United States v. Theresa E. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

Where the Government has presented a prima facie case that a claimed mineral is a common variety pumice and further that the pumice was not marketable at a profit as of July 23, 1955, the burden of showing by a preponderance of the evidence either that the mineral is an uncommon variety or that it was marketable as of July 23, 1955, devolves upon the mineral claimants.

A deposit of pumice is not an uncommon variety of pumice merely because it can presently be mined, removed and marketed at a profit. Rather, a mining claimant who asserts discovery of pumice must show that the deposit has a distinct and special value over other marketable deposits of pumice.

United States v. C. Fred Underwood et al., 22 IBLA 62 (Sept. 18, 1975)

Material which is suitable only for fill purposes, road based, or comparable uses is not locatable under the mining laws, and even if the material is suitable for other purposes, its sale for the above uses cannot be considered in determining its marketability to establish the value of the deposit as mineral. By the same token, it is improper to consider the market demand for such uses for the purpose of determining what volume of mineral material a prudent locator might claim in the reasonable anticipation of market demand for legitimate mineral uses in the foreseeable future, reasonably projected.

United States v. Melton E. Baker, 23 IBLA 319 (Jan. 19, 1976)

Where a mining claimant fails to submit adequate evidence as to the expected quantity and specifications of the local demand for industrial quality feldspar, does not receive any payment for inferior quality feldspar attempted to be sold for industrial use, and does not establish that the local market demand would justify the costs of developing a mill capable of processing industrial quality feldspar from the subject claim, the mining claimant has failed to satisfy the prudent man-marketability test which requires a showing that a reasonable prospect of success in developing a valuable mine exists. Where the anticipated costs and revenues of an alleged profitable mining operation are not based on reliable probative evidence, but only on mere speculation, a mining claim cannot be found valid.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

The testimony of a qualified geologist and professional mining evaluation engineer concerning the marketability of a deposit of sand and gravel at a particular time may be accorded substantial evidentiary weight under the standard in *Verrue* v. *United States*, 457 F.2d 1202 (9th Cir. 1972), if it is established that he was in the area at the time, had studied the local sand and gravel market and the factors which affected it, as well as the nature of the material and the methods and costs of removing, processing and marketing it.

Material which is principally valuable for use as fill, sub-base or ballast, for which ordinary earth or rock may be used, is not locatable under the mining laws, and even if the material is suitable for other purposes, its value for the above uses cannot be considered in determining its marketability as a valuable mineral deposit within the ambit of the general mining law.

In a contest of a mining claim located for common variety mineral materials prior to July 23, 1955, after which such locations were proscribed by law, where there has been no mining and no sales, the test of the validity of the claim is whether the claimant(s) could have mined and marketed the material profitably prior to that date and thereafter. The evidence tending to so show must relate to what a prudent man would have been reasonably justified in doing based upon the actual known circumstances at the time, not upon what he might have done if the proper conditions had then prevailed.

In determining whether a profitable market existed for material from a particular mining claim from which no material has been sold, a hypothetical market must be created in which the new material plays its part. The new material from the claim at issue must be included with that from all other known potentially competitive sources in calculating the factor of supply. If the supply so calculated amounts to a superabundance and so overwhelms the existing demand as to reduce the value or profit increment to a level below that which would prove attractive to a prudent man, the material cannot be said to be marketable at a profit.

United States v. J. R. Osborne et al. (Supp., On Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

With respect to materials as common as sand and gravel, a mining claimant must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed and disposed of at a profit, and since common varieties were declared no longer locatable by the Act of July 23, 1955, 30 U.S.C. § 611(1970), that a reasonably continuous market has existed from enactment of the statute.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

A prima facie case has been established when a Government mineral examiner testifies that he has examined the mining claim and found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. The fact that there may be a market for limestone from the mining claim at some future date under altered economic conditions is not sufficient to meet the marketability test of discovery.

United States v. Doris Conger Caldwell, 33 IBLA 153 (Dec. 19, 1977)

Establishing the marketability of a mineral deposit requires more than a showing that the mineral is theoretically marketable or intrinsically valuable. The claimant must demonstrate present continuing demand for the output of his mine.

It is not sufficient to show that attempts are being made to explore possible markets or to promote the utilization of the mineral. Past sporadic sales do not establish a market.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

In order to demonstrate a discovery of a valuable mineral, one must prove by a preponderance of the evidence the presence of minerals that would justify a prudent man in the expenditure of his labor and means with the reasonable prospect of success in developing a paying mine.

A mineral claimant whose claim embraces deposits of both common and uncommon varieties of minerals cannot aggregate the profits returned from mining the common variety and those netted from mining the uncommon variety to show marketability.

United States v. Margaret Mansfield, 35 IBLA 95 (May 15, 1978)

What men have or have not done over a period of years is proper evidence as to the conduct of a prudent man in the same or very nearly the same circumstances. Where mining claims had been held for many years and little or no commercial production was achieved on such claims, it may be concluded that no prudent man would have been justified in the belief that the mineral deposit could be developed, extracted, and marketed at a reasonable profit.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

Where contestee has not produced substantial evidence in respect to quantity of iron oxide ore existing on claims, or in respect to whether ore can be extracted and marketed at profit, contestee has not proved that person of ordinary prudence would be justified in further expenditure of his labor and means, with reasonable prospect of success, in developing valuable mine.

United States v. Michael P. Marion, 37 IBLA 68 (Sept. 18, 1978)

Material which is principally valuable for use as fill, sub-base, ballast, riprap or barrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. Verdugo & Miller, Inc., 37 IBLA 277 (Oct. 20, 1978)

ENVIRONMENT

In a contest of a patent application for a lode mining claim, the Board of Land Appeals may remand the case for further hearing to complete the record regarding the (1) availability and expense of necessary financing, land and water, (2) the expense of labor, and (3) the expense of compliance with environmental protection laws.

When parties are to offer evidence as to costs, to a mining claimant, of measures required by statute or regulation to mitigate environmental impact from development of a mine, it would be helpful for a Government contestant to assist an intervening State government and the claimant in computation of such costs; however, under 42 U.S.C. § 4332 (1970), an environmental impact statement is not required prior to the nondiscretionary Federal action of issuance of a mineral patent.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

EXCESS RESERVES

Material which is suitable only for fill purposes, road based, or comparable uses is not locatable under the mining laws, and even if the material is suitable for other purposes, its sale for the above uses cannot be considered in determining its marketability to establish the value of the deposit as mineral. By the same token, it is improper to consider the market demand for such uses for the purpose of determining what volume of mineral material a prudent locator might claim in the reasonable anticipation of market demand for legitimate mineral uses in the foreseeable future, reasonably projected.

Where it has been shown as to a number of mining claims located for cinders for which application for patent has been filed, that the amount of the deposits on the claim is excessively large in relation to the market that exists, only those claims can be found valid which by reason of location and volume and quality of deposits would make the most feasible mining operation and have a reasonable prospect of success; the remaining claims must be held invalid for lack of discovery.

United States v. Melton E. Baker, 23 IBLA 319 (Jan. 15, 1976)

MINING CLAIMS--Continued

HEARINGS

When one whose application for patent for a mining claim has been rejected requests a hearing to present evidence on the controlling issues of fact involved in the rejection of the application, such request must be granted.

Estate of Arthur C. W. Bowen (Deceased), 18 IBLA 379 (Jan. 30, 1975)

While a mining contest is within the jurisdiction of an administrative law judge, he may reopen the hearing for the production of further evidence before he makes his decision.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other essential issues to determine whether the application may be allowed.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970), (2) there are no intervening rights, (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable State statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 *et seq.*, and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

Evidence submitted on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

A further hearing in a mining contest may be ordered where the particular circumstances so warrant it.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

Where at a hearing held pursuant to sec. 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

MINING CLAIMS--Continued

HEARINGS--Continued

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered except for the limited purpose of deciding whether a further hearing is warranted. However, such evidence will only be considered if accompanied by a cogent explanation of why it was not tendered at the hearing.

United States v. Charles J. MacIver et al., 20 IBLA 352 (June 11, 1975)

United States v. C. F. Hallenbeck et al., 21 IBLA 296 (Aug. 11, 1975)

In a mining claim contest, the claimant is the proponent of the rule or order that he has complied with the provisions of the mining law, which have been brought into issue, and the Government bears the burden only of presenting a prima facie case of invalidity; the claimant must then preponderate on the issues litigated.

Where the hearing record in a mining claim contest is unsatisfactory, a "stipulation" on another issue may have prevented the introduction of evidence relevant to the issue on appeal, the parties will not be unduly burdened, and further proceedings will likely be productive of relevant evidence, the Board may remand the case for additional hearing.

United States v. Ed Brandt, 21 IBLA 166 (July 22, 1975)

A determination that land was known to be valuable for minerals leasable under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 *et seq.* (1970), at the time mining claims for such land were located, will be upheld where there has been a hearing on the question and the mining claimant has failed to produce evidence to overcome such a classification.

United States v. Long Beach Salt Co., 23 IBLA 41 (Dec. 2, 1975)

Evidence offered on appeal from an initial decision by an administrative law judge after a hearing in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

A further hearing may be ordered in a mining contest where the record is unsatisfactorily confusing and conflicting on the issue of quantity of minerals to satisfy the discovery test, a request for the rehearing has been made with an offer of proof which tends to show a new hearing might result in a different finding, and there has been no objection to the request.

United States v. George B. Edeling et al., 24 IBLA 34 (Feb. 17, 1976)

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered except for the limited purpose of deciding whether a further hearing is warranted.

United States v. Carl C. Fichtner et al., 24 IBLA 128 (Mar. 3, 1976)

MINING CLAIMS--Continued

HEARINGS--Continued

The Board of Land Appeals may set aside a previous Departmental decision, which declared mining claims invalid for lack of discovery, and remand the case for a further hearing, where contestee submitted a Petition for Reconsideration with affidavits alleging that, since the hearing, the claims have been mined by lessees who have approximately 10,000 tons of minable ore blocked out with assays averaging from 6 to 8 pounds of mercury per ton of ore.

United States v. Evelyn M. Higgins et al., 24 IBLA 187 (Mar. 18, 1976)

A mining claim contested under sec. 5 of the Surface Resources Act, *as amended*, 30 U.S.C. § 613 (1970), and a discrete claim contested under the general mining law, will be held subject to the provisions of the Surface Resources Act, and null and void respectively, where the contestees fail to submit evidence which preponderates over the Government's case that a discovery of a valuable mineral deposit has not been made on either claim.

United States v. Signa Lauch et al., 24 IBLA 354 (Apr. 26, 1976)

Evidence tendered on appeal from adverse decision in a mining claim contest can only be considered for the limited purpose of deciding whether a further hearing is warranted.

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds et al., 25 IBLA 67 (June 1, 1976)
83 I.D. 275

Where the Government fails to present a prima facie case, a contestee, upon timely motion, may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record. Therefore, even if the Government has failed to make a satisfactory prima facie case, or the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderance of the evidence, bearing the risk of nonpersuasion if he fails.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

MINING CLAIMS--Continued

HEARINGS--Continued

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing pursuant to the Administrative Procedure Act are required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Beverly Troll, 25 IBLA 157 (June 10, 1976)

David Loring Gamble, Darrel Douglas, 26 IBLA 249 (Aug. 18, 1976)

The right to a hearing on disputed issues of fact involving mining claims includes the right to adequate notice of the grounds upon which a claim's invalidity is asserted.

A Government contest complaint which asserts the invalidity of a claim because of insufficient quantity and quality of the located mineral within the limits of the claim does not put into issue the existence of excess reserves within the limits of a claim.

Where the alleged ground of invalidity of a claim was not charged in the complaint, and was not a matter of contention at the hearing, invalidation of the claim on such ground is improper, despite some evidence to support it, absent an opportunity for the contestee to present evidence on such issue where it appears that there is other pertinent evidence that may be submitted on that issue.

Where on appeal from a decision sustaining the Government's challenge of a patent application it is determined that the alleged ground of invalidity was one not raised in the complaint or at the hearing, the decision rejecting the patent application will be set aside and the Government will be afforded an opportunity to amend its complaint to embrace the charge. Where the Government does amend its complaint the mineral claimant will be granted the right to an evidentiary hearing on such issue.

United States v. Robert E. McElwaine, 26 IBLA 20 (July 7, 1976)

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered in the absence of a compelling showing that it could not be tendered at the hearing, and even then such evidence may only be considered for the purpose of determining whether a rehearing is warranted.

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy B. Cummins, 26 IBLA 223 (Aug. 17, 1976)

MINING CLAIMS--Continued

HEARINGS--Continued

A petition to reopen a hearing for submission of further evidence will be denied when the contestee offers no valid justification for the neglect to offer the evidence, which was or could have been available at the original hearing.

United States v. Don Hanson, 26 IBLA 300 (Aug. 27, 1976)

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Co., Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

In a proceeding before the Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

W. A. Todd, A. E. Johnson, 28 IBLA 180 (Dec. 1, 1976)

David Budinski et al., 31 IBLA 139 (June 30, 1977)

Evidence tendered on appeal from a mining contest may only be considered for the limited purpose of determining whether a further hearing is warranted.

United States v. George J. Hunt and A. M. Goodwin, 29 IBLA 86 (Feb. 23, 1977)

Evidence tendered on appeal from an adverse decision in a mining claim contest can only be considered to determine whether a further hearing on the contest should be granted. Where the appellant shows no substantial equitable basis for holding such a hearing and where no substantial expectation appears to exist that such a hearing would produce more conclusive evidence on the issue, a further hearing will not be ordered.

United States v. Bradley F. Denham, 29 IBLA 185 (Mar. 18, 1977)

Where the Government mineral examiner in a mining claim contest concludes that the claim at issue contains no valuable mineral deposit, and his opinion is based on a sampling taken from a point on the claim indicated by one of the contestees, this opinion will suffice to establish a prima facie case of no discovery and thus will shift the burden of proof onto the contestees.

Evidence tendered for the first time on appeal will be considered only for the limited purpose of determining whether a further hearing is indicated and will be received for that limited purpose only where there is a cogent and convincing reason why such evidence was not submitted at the original hearing.

United States v. John L. Maley and James I. Fagel, 29 IBLA 201 (Mar. 22, 1977)

MINING CLAIMS--Continued

HEARINGS--Continued

In a Government contest challenging the validity of mining claims located for a clay-type material, an adequate prima facie case is established where there are expert witness opinions that the deposit is only a common clay or shale and it cannot meet refractory standards. The contestees then must go forward with evidence to rebut the Government's case with a preponderance of the evidence.

United States v. Thomas J. Peck et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

Where land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing.

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

Charles B. Nielsen, Pauline Nielsen, 30 IBLA 235 (May 26, 1977)

James Messano, 35 IBLA 383 (June 23, 1978)

Where land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing.

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

Evidence tendered for the first time on appeal will be considered only for the limited purpose of determining whether a further hearing should be held.

United States v. Richard P. Walls, 30 IBLA 333 (June 7, 1977)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

United States (Contestant) v. Earl Frisco and Sandra L. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

Andrew J. Van Derpoel et al., 33 IBLA 248 (Jan. 5, 1978)

United States v. Clark J. Guild et al., 34 IBLA 387 (May 3, 1978)

Continued--

MINING CLAIMS--Continued

HEARINGS--Continued

United States v. Don Lee Seto and Pauline Seto, 35 IBLA 4 (May 3, 1978)

United States v. Michael P. Marion, 37 IBLA 68 (Sept. 18, 1978)

United States v. John A. Cooley, 43 IBLA 276 (Oct. 15, 1979)

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give them appropriate weight according to the circumstances surrounding the specific report.

United States v. Robert A. Bukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

A mining claim will be declared null and void where the Board's de novo review of the evidence submitted at a hearing, held in accordance with the provisions of the Administrative Procedure Act and presided over by an administrative law judge qualified under the Act, establishes that the claimant has not satisfied the requirements of discovery, and there was no error in the conduct of the proceeding.

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

When a mining claim located in the Papago Indian Reservation is declared invalid for failure to pay annual rental timely, and that fact is not disputed, a hearing is not required as there are no issues of fact involved but only of law.

Louis D. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

A second hearing will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where she actually was represented at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result.

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

United States of America v. David L. King et al., 34 IBLA 15 (Feb. 10, 1978)

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

MINING CLAIMS--Continued

HEARINGS--Continued

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

H. P. Webb, 34 IBLA 362 (May 1, 1978)

When the United States contests a mining claim for lack of discovery of a valuable mineral deposit, a crucial date for the existence or nonexistence of the discovery is the date of the hearing. Where a mining claimant has shown no justification for her failure to offer evidence of a discovery at the hearing nor shown any likelihood that further evidence could be presented to change the result, a request on appeal for additional time to explore the claim for additional evidence of minerals will be denied, and an administrative law judge's decision declaring the claim null and void will be affirmed.

United States v. Thelma C. Crismon, 34 IBLA 381 (May 2, 1978)

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Harry D. Wilson, 35 IBLA 349 (June 19, 1978)

The Government has established a prima facie case of nondiscovery when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Catherine E. Gay, 36 IBLA 148 (July 31, 1978)

Evidentiary submissions on appeal can be considered only for the limited purpose of determining whether a further hearing should be granted. The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

There is not a sufficient equitable basis for reopening a hearing in a mining contest because of an alleged fire to the contestee's home 3 days before the scheduled hearing where neither she nor her attorney who had entered an appearance in the case requested a postponement of the hearing or a continuation of the hearing after it had been held. Also, a further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery of a valuable mineral deposit.

United States v. Florence J. Mattox, 36 IBLA 171 (July 31, 1978)

MINING CLAIMS--Continued

HEARINGS--Continued

A second hearing will not be afforded generally where a claimant was given notice and an opportunity to appear at a hearing, where he did appear and was represented at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of proving a discovery onto the mining claimant, when an expert witness testifies that he has examined the claim and has found the mineral values insufficient to support a finding of discovery.

United States v. John S. Porter, 37 IBLA 313 (Oct. 25, 1978)

A second hearing will not be afforded where a mining claimant has submitted nothing which suggests that another hearing would produce a different result, *i.e.*, a finding that a valuable mineral deposit has been discovered on a mining claim. Assertions that further mineral examination would prove the existence of such a deposit and that such a deposit exists on adjacent land, without more, do not entitle the claimant to another hearing.

United States v. Lost Polack Mining Ass'n, 38 IBLA 101 (Nov. 2[illegible], 1978)

As the Government is required to adjudicate mining claims contests under its own rules and regulations, a customary review of the validity of a claim by a district examining committee is immaterial to the adjudication of the actual validity of the claim. Local customs relating to validity of a claim may only add to the Federal mining law; such customs cannot replace Federal requirements for adjudicating the validity of claims.

United States v. Russ Knecht, 39 IBLA 8 (Jan. 8, 1979)

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of going forward, when an expert witness testified that he has examined the claim and has found the mineral value insufficient to support a finding of discovery.

United States v. Tempest Mining Co., 40 IBLA 297 (Apr. 27, 1979)

Two mining claims, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing. Such a result obtains despite reference to a location notice prior to the withdrawal where appellants do not make a showing of sufficient specific facts upon which to predicate a hearing, including which of the claims the previous location relates to, the boundaries thereof, whether the previous location was for a locatable mineral under a withdrawal order then in force, and the name of the previous locator.

The Heirs of M. K. Harris, 42 IBLA 44 (July 31, 1979)

MINING CLAIMS--Continued

HEARINGS--Continued

It was proper to deny mining claimants' request to redrill on mining claims after the land was withdrawn from mining where the work would be an effort to make a discovery of a valuable mineral deposit within the claim rather than simply a confirmation or corroboration of a discovery prior to the withdrawal.

United States v. William Lavon Chappell et al., 42 IBLA 74 (Aug. 13, 1979)

A second hearing will not be afforded where a mining claimant had notice of and appeared at the first hearing and no evidence has been submitted suggesting another hearing would produce a different result.

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. Howard C. Long, Dolores F. Fillice, 43 IBLA 150 (Sept. 28, 1979)

The rule of evidence excluding hearsay is not strictly adhered to in administrative proceedings, particularly where the evidence, such as assay reports with a proper foundation concerning the sampling, submission of the samples for assaying, and the reputation of the assayer, is competent and relevant. After such reports are admitted, the factfinder may give the appropriate weight according to the circumstances surrounding the specific report. However, it is not improper to exclude an assay report where neither the assayer nor the sample-taker testifies concerning its origins, and no other foundation is laid for its introduction.

United States v. John E. Burt et al., 43 IBLA 363 (Oct. 29, 1979)

A continuance of a hearing into the validity of a mining claim will only be granted where the mining claimant presents sufficient reason to justify the grant of an additional opportunity to present his case, *i.e.*, where circumstances have placed a substantial constraint upon his ability to obtain or offer samples or other evidence of a discovery. Furthermore, it must appear that the claimant is not using the additional time to make the requisite discovery.

United States v. Elbert Gassaway, 43 IBLA 382 (Oct. 31, 1979)

It is the responsibility of a mining claimant to present evidence supporting his allegation of bias on the part of Government mineral examiners testifying as to the validity of his claim in a contest proceeding, and a showing of Department affiliation does not discredit a witness.

United States v. J. C. Wilson, 44 IBLA 1 (Nov. 6, 1979)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record

MINING CLAIMS--Continued

HEARINGS--Continued

concerning the status of the land when the claim was located, no hearing is required.

Dorothy Smith, Keith C. Hayes, 44 IBLA 25 (Nov. 6, 1979)

An administrative law judge in rendering a decision need not make a separate ruling on each finding of fact and conclusion of law. It is sufficient if the decision summarizes the controlling principles of law and the testimony of witnesses relative thereto and explains why appellants' evidence was insufficient to meet the legal test for a discovery of valuable mineral.

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Jon Zimmers and Claire Kelly, 44 IBLA 142 (Nov. 30, 1979)

LANDS SUBJECT TO

On petition for reconsideration, the assertion of rights to a mining claim under an Aug. 1968 location does not demonstrate error in or require reconsideration of this Board's decision, which affirmed that a mining claim located in 1969 for the same land, after the land was withdrawn from mineral location in Oct. 1968, was null and void ab initio. Neither this Board's decision initially or on petition affects petitioner's rights, if any, under such a prior location.

R. C. Jim Townsend (On Reconsideration), 18 IBLA 407 (Feb. 10, 1975)

Where land was subject to a mining claim at the time a small tract classification order withdrew the land from mineral entry and the mining claim was thereafter declared null and void, a subsequent transferee of the mining claim has no standing to object to the order classifying the land under the Small Tract Act.

Richard E. and Shirley A. Jarrett, 19 IBLA 78 (Feb. 27, 1975)

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970), (2) there are no intervening rights, (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable State statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 *et seq.*, and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

Sec. 8 of the Act of Apr. 23, 1904, 33 Stat. 302, providing for survey and allotment of lands within the Flathead Indian Reservation, excepts from mineral entry those lands classified as "timber land" by a Presidential Commission, and the Department of the Interior has no authority to overturn such classification and declare the "timber lands" more valuable as "mineral lands."

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Lands set apart as an Indian reservation cease to be a part of the public domain. A mining claim located on Indian lands not opened to entry is void ab initio.

Montana Copper King Mining Co. et al., 20 IBLA 30 (Apr. 16, 1975)

Mining claims are properly declared null and void ab initio where they are located on land which, on the date of location, was included in an application for withdrawal which previously had been noted on land office records.

John Boyd Parsons, 22 IBLA 328 (Nov. 10, 1975)

Merrill F. Moore, J. J. Adams, 43 IBLA 357 (Oct. 29, 1979)

A determination that land was known to be valuable for minerals leasable under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 *et seq.* (1970), at the time mining claims for such land were located, will be upheld where there has been a hearing on the question and the mining claimant has failed to produce evidence to overcome such a classification.

Mining claims located in 1933 under the general mining laws, 30 U.S.C. § 21 *et seq.* (1970), on lands known to be valuable for minerals subject to leasing under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 *et seq.* (1970), are null and void ab initio because in 1933 such lands were not open to location and disposition under the mining laws; however, since the passage of the Act of Aug. 12, 1953, 30 U.S.C. § 501 (1970), and the Multiple Mineral Development Act of Aug. 13, 1954, 30 U.S.C. § 521 *et seq.* (1970), it is possible to locate a mining claim on lands covered by a mineral permit or lease, or application therefor, or which are known to be valuable for leasable minerals, but the leasable minerals are reserved to the United States.

United States v. Long Beach Salt Co., 23 IBLA 41 (Dec. 2, 1975)

Lands within national parks are not subject to mining location except where specifically authorized by law. 43 CFR 3811.2-2. However, lands within a national forest remain open to location and entry under the mining laws. 16 U.S.C. § 478 (1970). Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of withdrawal for the national park by such a discovery, the land within the claims located in the park would not be excepted from the effect of the withdrawal.

United States v. Wallace W. Vaux, 24 IBLA 289 (Apr. 1, 1976)

When title to an entire in-place school section has passed to the State, the United States no longer has a property interest therein and the land is no longer subject to location under the mining laws.

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds et al., 25 IBLA 67 (June 1, 1976)
83 I.D. 275

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Claims located prior to that date were not resuscitated by the Mining Claims Rights Restoration Act of 1955.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

Patented lands which are subsequently acquired by the United States are not, by mere force of reacquisition, open to disposal under the public land laws. In the absence of specific statutory direction to the contrary, the acquired land is not subject to location under the mining laws.

J. C. Babcock, J. G. Shipp, 25 IBLA 316 (June 30, 1976)

Placer mining on claims located pursuant to the Mining Claims Rights Restoration Act of 1955 will be prohibited where unrestricted mining activity would substantially interfere with other uses of the land.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

A verified statement required under sec. 5 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 613 (1970), is properly rejected when the mining claim in connection with which it is filed, is declared to be null and void ab initio because it was located on land withdrawn from mineral location for power purposes prior to the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 *et seq.* (1970), and the land was segregated for purposes other than power development at that time and continuously thereafter.

Roy B. Cummins, 26 IBLA 223 (Aug. 17, 1976)

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Douglas, 26 IBLA 249 (Aug. 18, 1976)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

The rejection of an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), to open lands in a reclamation withdrawal to mineral location will be affirmed when the applicant fails to submit facts to show the basis for his knowledge or belief that the lands contain valuable mineral deposits. Merely to state the lands contain such deposits is not sufficient.

Joe Ashburn, 27 IBLA 227 (Oct. 12, 1976)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

W. A. Todd, A. D. Johnson, 28 IBLA 180 (Dec. 1, 1976)

Sally Lester et al., 31 IBLA 43 (June 21, 1977)

J. R. Nesmith, 38 IBLA 357 (Dec. 22, 1978)

A mining claim is properly declared null and void ab initio to the extent it has been located, prior to the enactment of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. §§ 621-5 (1970), on lands withdrawn from mineral location by a power project classification.

Earl D. Roberts, 28 IBLA 286 (Dec. 27, 1976)

Lands described in a State selection application under sec. 6(b) of the Alaska Statehood Act are segregated from all forms of appropriation including location under the mining laws from the time the application is filed in the proper office of the BLM. An amendment to a pre-existing application is effective to segregate the land described in the amendment from the time it is filed.

Mining locations made on land segregated from operation of the mining laws are null and void ab initio.

Dennis G. Quinn, 29 IBLA 307 (Mar. 30, 1977)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

Charles R. Nielsen, Pauline Nielsen, 30 IBLA 235 (May 26, 1977)

James Rossano, 35 IBLA 383 (June 23, 1978)

A mining claim located for a nonmetalliferous mineral on land at a time when such land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

David Budinski et al., 31 IBLA 139 (June 30, 1977)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

A mining claim located on withdrawn land confers no right on the locator and is null and void ab initio. However, when BLM has so held claims to be null and void and it appears that the claims may not be invalid due to status factors, the case will be remanded for further consideration.

Douglas L. Russell et al., 31 IBLA 237 (July 12, 1977)

A mining claim located before Aug. 11, 1955, on land within an existing highway material site withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

Publication in the *Federal Register* of a notice of proposed classification pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

The fact that a mining claimant has held a claim for many years and performed work on the claim does not, by itself, create any rights against the Government which will estop the Government from determining the validity of the claim. It is incumbent upon the locator of a mining claim to exercise considerable care in ascertaining the status of the land embraced in the claim and the limitations of his rights as the holder of an unpatented mining claim. Failure of a Government employee to advise appellant that the land embraced in the mining claim was closed to mining location cannot give life to an invalid claim.

Arthur W. Boone, 32 IBLA 305 (Sept. 30, 1977)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio. Where the official records of the Department reflect such proposed withdrawal, a hearing is not required to establish the invalidity of the claim.

Mark W. Boone and John L. Dutra, 33 IBLA 32 (Nov. 25, 1977)

Where land has been reconveyed to the United States and the reconveyance reserves the minerals to the grantor, the United States has no authority to recognize a claim for the minerals under the mining laws, 30 U.S.C. § 22 (1970), because the minerals are not owned by the United States. Such a claim is properly declared null and void, regardless of whether or not a claimant performed assessment work or paid taxes on the land.

All Glory to God Church, 33 IBLA 61 (Dec. 5, 1977)

Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the United States mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio. Attempts to record such claims under 43 U.S.C.A. § 1744 (West Supp. 1978) are properly rejected.

Paul S. Coupey, 33 IBLA 178 (Dec. 20, 1977)

Baron Mining Corp., 39 IBLA 234 (Feb. 12, 1979)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

Ray L. Virgin, 33 IBLA 354 (Jan. 18, 1978)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a State's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Janelle R. Deeter, Gary R. Deeter, Verna E. Lyons, Harry E. Lyons, 34 IBLA 81 (Feb. 22, 1978)

Joe E. Denson, 43 IBLA 136 (Sept. 28, 1979)

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

propose terms and conditions to protect the Government's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

Where a reclamation withdrawal is revoked as to certain land but that land is not restored to entry, the land remains closed to mineral entry and a mining claim located on it is null and void.

Lands which are covered by a license for a power project issued by the Federal Power Commission are not open to mineral location.

Raymond C. Gardner et al., 34 IBLA 179 (Mar. 14, 1978)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

A mining claim or millsite located on land at a time when the land is withdrawn from mineral location is properly declared null and void.

Floyd G. Brown, 35 IBLA 110 (May 15, 1978)

A mining claim, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing.

Edward L. Macauley, Martha D. Macauley, 35 IBLA 202 (May 24, 1978)

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, *as amended*, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio.

Harry D. Wilson, 35 IBLA 349 (June 19, 1978)

Mining claims located on lands within a withdrawal which were not open to mineral entry are properly declared null and void ab initio.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio.

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Victor A. G. Schmidt, 36 IBLA 394 (Sept. 5, 1978)

Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the United States' mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio.

A mining claim, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing.

Federal-American Partners, 37 IBLA 330 (Oct. 26, 1978)

Unless the statute creating the area specifically provides otherwise, areas within the National Park system are not open for location of mining claims.

Patented lands which are subsequently acquired by the United States for the National Park Service are not, by mere force of acquisition, open to disposal under the public land laws. In the absence of specific statutory direction to the contrary, the acquired land is not subject to location under the mining laws. 30 U.S.C. § 22 (1970).

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Upton and William C. Wells, 38 IBLA 90 (Nov. 15, 1978)

Mining claims on land subsequently withdrawn from mineral entry are not subject to relocation, despite failure of the original locators to do assessment work, because relocation by another party is of necessity adverse to the prior location.

Edward T. Dwyer, 38 IBLA 144 (Nov. 30, 1978)

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio in the absence of a showing that the claimants had a valid existing right to the claims which predates the withdrawal. Where claimants assert that they have simply filed amended notices of location of claims which were first located prior to the withdrawal, but the record indicates that the claims are in fact not the same as those located prior to the withdrawal, there is no valid existing right to the new claims, and they are properly declared null and void ab initio.

Riter Ekker, Kerry Ekker, 38 IBLA 277 (Dec. 13, 1978)

Pursuant to 43 CFR 2091.2-5, an application for withdrawal temporarily precludes entry on the land in derogation thereof, from the time the application is noted on the records until revocation thereof is also noted on the records, and such withdrawal is not deemed to have expired despite the fact that the withdrawal application was noted on the records 7 years prior to location of the mining claim.

A mining claim located in part on land withdrawn for a utility corridor and segregated from mineral entry is null and void ab initio as to such land.

Earl D. Moody, Hinton E. White, 38 IBLA 385 (Dec. 29, 1978)

A mining claim located on land at a time when the land is segregated from mining location by a State selection application is properly declared null and void ab initio.

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception.

W. Ted Hackett, 39 IBLA 28 (Jan. 11, 1979)

Lands which were subject to an oil and gas lease offer on Sept. 20, 1951, were not open to mineral location, and mining claims located on such lands on this date are properly declared null and void in the absence of compliance with the redemption provisions of the Act of Aug. 12, 1953, and the Multiple Mineral Development Act, requiring filing of an amended notice of location prior to Dec. 10, 1953, in the place and manner in which the original notice was of record.

Dorothy Smith, 39 IBLA 306 (Feb. 23, 1979)

Portions of mining claims located on lands within a withdrawal and not open to mineral entry are properly declared null and void ab initio.

Barry C. Binning, 39 IBLA 390 (Feb. 28, 1979)

A mining claim located on lands not then in Federal ownership is null and void ab initio.

Junior L. Dennis, 40 IBLA 12 (Mar. 9, 1979)

Lands segregated on the public records by a proposed withdrawal posted Apr. 6, 1973, or a Recreational and Public Purposes Classification filed Nov. 13, 1956, were not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Mining claims purportedly located on land not available for such location confer no property right upon the locator, and may be declared null and void ab initio without a hearing under 5 U.S.C. § 554 *et seq.* (1976).

The notation on public records on Apr. 6, 1973, of an application for withdrawal, even though the application did not contain a reference to authority for the withdrawal, as required in 43 CFR 2351.2(b) (1972), was sufficient to temporarily segregate the land under secs. 2091.2-5 (1972) and 2351.3 (1972) from subsequent inclusion in a mining location.

Delmer McLean et al., 40 IBLA 34 (Mar. 15, 1979)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Gerald Byron Bannon, 40 IBLA 162 (Mar. 30, 1979)

Tilden Holloway, Roland Wright, 43 IBLA 134 (Sept. 28, 1979)

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

John F. Drobnick, Dorcas M. Drobnick, 41 IBLA 164 (June 18, 1979)

Cole V. Pullen, 43 IBLA 102 (Sept. 24, 1979)

Two mining claims, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing. Such a result obtains despite reference to a location notice prior to the withdrawal where appellants do not make a showing of sufficient specific facts upon which to predicate a hearing, including which of the claims the previous location relates to, the boundaries thereof,

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

whether the previous location was for a locatable mineral under a withdrawal order then in force, and the name of the previous locator.

The Heirs of H. K. Harris, 42 IBLA 44 (July 31, 1979)

Prior to passage of the Multiple Mineral Development Act, 30 U.S.C. §§ 521-31 (1976), a prima facie valid mineral lease, or application therefor, though void and ineffectual to vest any rights to minerals subject to the mining laws in the lessee segregated the land from the operation of the mining laws and prevented the initiation of rights under the mining laws by another person until it had been set aside and removed from the records of the land office.

Charles House, Mrs. Leonard Skinner, 42 IBLA 364 (Sept. 11, 1979)

Where mining claims were originally located on land which was withdrawn from mineral location, the claims will be declared null and void ab initio.

American Resources, Ltd., 44 IBLA 220 (Dec. 11, 1979)

LOCATABILITY OF MINERAL

Generally

When the Government contests a mining claim and establishes a prima facie case that contestee has not made a discovery of a locatable mineral deposit, the burden devolves on contestee to establish by a preponderance of the evidence that the claim has been validated by the discovery of a locatable mineral deposit.

Marketability of mineral material is not the sole test of the validity of a mining claim. Profitable sales of mineral material for non-validating uses cannot be used in determining the validity of a mining claim; the claimant must meet the prudent man/marketability test in a market for which the material is locatable.

Bog iron ore, used as a soil conditioner or soil amendment, is not a locatable mineral deposit in the absence of a showing that it meets the test of United States v. Bunkowski, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), i.e., it is found to be not just a physical amendment to the soil but a chemical amendment which alters and improves soil or plant chemistry.

United States v. Theresa E. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

Ground feldspar, used as a soil conditioner or soil amendment, is not a locatable mineral deposit under the general mining laws in the absence of a showing that the mineral meets the test of United States v. Bunkowski, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), namely, that the mineral is found to be not just a physical amendment to the soil, but rather a chemical amendment which alters and improves soil or plant chemistry.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

MINING CLAIMS--Continued

LOCATABILITY OF MINERAL--Continued

Generally--Continued

Water is not a mineral which is locatable under the general mining law.

Robert L. Perry et al., 25 IBLA 287 (June 28, 1976) 83 I.D. 249

A deposit of rhyolite and dacite stone, used in the manufacture of asphaltic concrete and as sealcoating on asphaltic pavement, which occurs in a naturally crushed state, which has been roughly stratified and naturally sorted by the forces of nature to an extent that is not found on any other material source in the area, which has little or no overburden, and which affords specification material at a cost significantly below that incurred for the production of any other aggregate from sources in the same market area, has special and distinct physical properties which give it distinct special economic value, and therefore it is locatable as an uncommon variety under the general mining law, and its appropriation is not barred by 30 U.S.C. § 611 (1970).

United States v. Melvin McCormick, 27 IBLA 65 (Sept. 29, 1976)

A valuable deposit of geodes, round stones with crystalline centers and composed of recognized mineral substances, which possess an economic value in trade and the ornamental arts, and which are being removed by actual mining operations, is subject to location under the mining laws.

United States v. Glenn C. Bolinder and L. C. Turney, et al., 28 IBLA 187 (Dec. 6, 1976) 83 I.D. 609

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be a common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

"Common Clay." A "common clay" not locatable under the mining laws does not include clay having exceptional qualities which meets refractory and other quality standards for highgrade ceramic products or other products requiring a high refractoriness, or which is useful for certain industrial uses, such as in the oil and oil well drilling industries, outside the manufacture of general clay products. It does include, however, clay usable or used only for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, and for pottery and ordinary earthenware and stoneware. The fact industrial and technological changes may make a certain clay deposit valuable for a given major manufacturer of brick, tile and other clay products, because it meets its peculiar specifications for blends with other raw materials, does not warrant a change from Departmental precedents and a strong Congressional policy establishing that clay usable only for such purposes is a common clay not locatable under the mining laws.

United States v. Thomas J. Peck et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

MINING CLAIMS--Continued

LOCATABILITY OF MINERAL--Continued

Generally--Continued

Water is not a locatable mineral and sales thereof cannot be considered in determining whether there has been a valuable discovery.

United States v. Ted G. Ax, 43 IBLA 146 (Sept. 28, 1979)

Leasable Compounds

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

LOCATION

If mining claimants possess the essential qualifications as to citizenship, and if they peacefully entered and occupied the land and discovered a valuable mineral deposit thereon at a time when both the land and the mineral were subject to appropriation under the mining laws, and if they thereafter remained in peaceful, exclusive possession and openly worked the claim for the period prescribed by the State statute of limitations for mining claims, and expended at least the minimum amount of money prescribed by law in the improvement of the claim, they have thereby established their right to receive a patent pursuant to 30 U.S.C. § 38 (1970) notwithstanding their error in locating and recording their claim under the statute pertaining to placer locations rather than properly under the lode mining law, assuming that there has been no intervening loss of discovery.

Estate of Arthur C. W. Bowen (Deceased), 18 IBLA 379 (Jan. 30, 1975)

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. This withdrawal does not extend to minerals in lands near tributaries of designated rivers unless the tributaries were expressly included.

Walter B. Freeman et al., 25 IBLA 150 (June 10, 1976)

MINING CLAIMS--Continued

LOCATION--Continued

Mining claims are properly declared null and void ab initio when the locations were not perfected by performance of the condition precedent to the opening of withdrawn land to location, entry and patent under the mining laws.

Lloyd W. McCarty, 28 IBLA 286 (Dec. 20, 1976)

Where, in a contest to determine the validity of certain mining claims located for common building stone, sand and gravel, the Government charges that the claims were not located prior to the Act of July 23, 1955, which prohibited the subsequent location of such minerals, the finding by the Hearing Examiner and two administrative appellate tribunals that the charge is true and the claims were not timely located requires a holding that the claims are null and void, where such finding is supported by a preponderance of credible evidence.

United States v. Frank and Wanita Melluzzo (Supp., On Judicial Remand), 32 IBLA 46 (Sept. 2, 1977)

The fact that a mining claimant has held a claim for many years and performed work on the claim does not, by itself, create any rights against the Government which will estop the Government from determining the validity of the claim. It is incumbent upon the locator of a mining claim to exercise considerable care in ascertaining the status of the land embraced in the claim and the limitations of his rights as the holder of an unpatented mining claim. Failure of a Government employee to advise appellant that the land embraced in the mining claim was closed to mining location cannot give life to an invalid claim.

A mining claim located in a powersite at a time when the land was withdrawn from mineral entry is null and void ab initio. However, such a claim embracing a discovery may still be valid under a new location made by holding and working the claim pursuant to 30 U.S.C. § 38 (1970) while the land was open to mining location under the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 *et seq.* (1970).

Under 30 U.S.C. § 38 (1970), holding and working a mining claim in open, notorious, adverse possession for the period of time required to establish adverse possession of mining claims, during which time the land is open to mining location, is tantamount to a new location or relocation, dispensing with proof of valid notices. However, sec. 38 does not obviate the necessity of a discovery of a valuable mineral in order to establish a valid claim.

Arthur W. Eggers, 32 IBLA 305 (Sept. 30, 1977)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

The purpose of an amended location is to cure imperfections and correct errors, which in the absence

MINING CLAIMS--Continued

LOCATION--Continued

of intervening rights relates back to the date of original location. An amended location made while land is withdrawn from mineral entry is ineffectual.

Ray L. Virg-in, 33 IBLA 354 (Jan. 18, 1978)

No location of a placer mining claim on Federal lands may include more than 20 acres for each individual claimant.

United States of America v. David L. King et al., 34 IBLA 15 (Feb. 10, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h), not the date on which the owner completes the last step in locating and recording a mining claim as required by State law.

Paul S. Cooper, 35 IBLA 112 (May 15, 1978)

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. Land within one-quarter mile of the bank of the Illinois River, Oregon, a river designated in sec. 5(a) of the Act as a potential addition to the system, is withdrawn from mineral entry and therefore, not available for mining claims.

The location of a mining claim simply to maintain a road and insure access to other claims beyond is not a legitimate purpose within the scope or intention of the general mining law.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location of the claim is the date as defined in 43 CFR 3833.0-5(h).

Ronald L. Nordwick, 36 IBLA 230 (Aug. 14, 1978)

Charlie Carnal, Walter Peck, and Edward Dczkanski, 43 IBLA 10 (Sept. 11, 1979)

MINING CLAIMS--Continued

LOCATION--Continued

No location of a placer mining claim may include more than 20 acres for each individual claimant. Where claims in excess of 20 acres are located by an association of locators and there is no evidence of a qualifying discovery of minerals prior to the claim's conveyance to a single individual, the claim is void, and any subsequent discovery will serve only to validate a claim of 20 acres.

Where a mining claimant alters the legal description in the location notice for his "Claim A," so that it now describes land previously embraced by a portion of his "Claim B," which was void ab initio as a matter of law, the alteration of "Claim A" must be considered a relocation rather than an amendment.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 16, 1978)

Where it is determined that a person or association, they and their grantors, have met the fundamental requirements of the possessory rights section of the mining laws, 30 U.S.C. § 38 (1976), *i.e.*, where they have held and worked their claims in this instance for the qualifying period of 5 years under the Arizona statute of limitations covering actions to recover real property, they are entitled to a patent to those areas where there are no conflicting mining claims, regardless of the fact that the claims were improperly located as placer claims for perlite lode deposits.

United States v. Estate of Arthur C. W. Bowen ______ (Deceased), and Superior Perlite Mines, Inc. (Contestees), Harborlite Corp. (Intervenor), 38 IBLA 350 (Jan. 8, 1979)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception.

W. Ted Hackett, 39 IBLA 28 (Jan. 11, 1979)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception and confers no rights on the locator.

W. B. and Margaret W. Collier, 39 IBLA 81 (Jan. 24, 1979)

The purpose of 30 U.S.C. § 38 (1976) whereby a person or association may establish a right to patent lands which said person or association has held and worked for a period equal to the statute of limitations is to obviate the necessity of proving formal compliance with requirements for locating a claim, but not to dispense with proof of discovery.

The primary rule which the courts apply in construing and interpreting a conveyance where the location of the boundary lines is uncertain by reason of inconsistent or conflicting descriptive calls in the conveyance is that the intention of the parties controls and is to be followed. Where the calls for the location of boundaries to land are inconsistent, calls to monuments, natural or artificial, are of paramount importance and will prevail over all other calls inconsistent therewith. Calls to boundaries are of secondary importance, and courses and distances must be altered if, as given, they will not reach the designated boundary. Calls of course take precedence over distances, so that where it is necessary to either change direction to reach a boundary or else reduce or extend the prescribed distance, the distance must yield to the course. The recital of quantity or area of land conveyed or retained will be least influential.

United States v. Leroy S. Johnson et al., 39 IBLA 337 (Feb. 28, 1979)

Designation of a river for potential addition to the national wild and scenic rivers system, pursuant to the Wild and Scenic Rivers Act of 1968, *as amended*, 16 U.S.C. § 1271 *et seq.* (1976), withdraws Federal lands constituting the bed or bank or within one-quarter mile of the bank of such river from all forms of appropriation under the mining laws, and on appeal the mining claimant bears the burden of showing by survey or other evidence that his claim is outside the withdrawn area.

Barry C. Binning, 39 IBLA 390 (Feb. 28, 1979)

Prior to passage of the Multiple Mineral Development Act, 30 U.S.C. §§ 521-31 (1976), a prima facie valid mineral lease, or application therefor, though void and ineffectual to vest any rights to minerals subject to the mining laws in the lessee segregated the land from the operation of the mining laws and prevented the initiation of rights under the mining laws by another person until it had been set aside and removed from the records of the land office.

Where a mining claimant attempts to establish his location of a mining claim containing common variety minerals by invoking the terms of 30 U.S.C. § 38 (1976) and fails to complete the statutory period for holding and working his claim prior to July 23, 1955, BLM may properly hold such claim to be null and void.

Charles House, Mrs. Leonard Skinner, 42 IBLA 364 (Sept. 11, 1979)

For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location. To the extent, however, that an amended location merely furthers rights acquired by a valid subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights will not prevent the amended location from relating back to the original location.

Since an amended notice merges with the original notice, the filing of the amended notice, for purposes of recordation under either sec. 8 of the Mining in the Parks Act, 90 Stat. 1342, 1343, 16 U.S.C. § 1907 (1976), or sec. 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 2769, 43 U.S.C. § 1744 (1976), together with such other information required by the applicable regulations, constitutes compliance with the recording requirements of those Acts.

Except for claims held under 30 U.S.C. § 38 (1976), a failure to record a mining claim as required by State law, coupled with a withdrawal of the land prior to any curative action, invalidates the claim, and thus precludes subsequent amendment of the claim.

An oral transfer of a mining claim, though contrary to the statute of frauds, will not serve to invalidate the

claim, and a person subsequently seeking to record the claim will be afforded the opportunity to prove that the transfer actually occurred.

Where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. Gail Tibbetts et al., 43 IBLA 210 (Oct. 5, 1979)
86 I.D. 538

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Where there are factual questions relating to whether refilings subsequent to a withdrawal were in the nature of an "amended locations" or whether they constituted "relocations," the matter must be referred for a hearing to allow the claimant the opportunity to show that subsequent filings have been amended locations, and that it is thus the successor in an unbroken chain of title dating back to the original location.

American Resources, Ltd., 44 IBLA 220 (Dec. 11, 1979)

"Relocation." A relocation of a mining claim is best defined as a location adverse to the prior locations.

"Amended Location." An amended location of a mining claim is best defined as one in furtherance of an earlier, valid location, and a subsequent location referring to the same parcel of land, filed by the same party, changing only the name of the claim, will be deemed an amended location.

An "amended location" generally relates back, where no adverse rights have intervened, to the date of the original location, but where there has been a withdrawal, a subsequent location relates back only to the extent that such a location merely furthers rights acquired by a valid subsisting location and does not embrace additional or new land.

When on appeal from a Bureau of Land Management decision, information is submitted upon which it is alleged that a location relates back to a prewithdrawal location, which information has not been evaluated by BLM, the decision may be set aside and the case remanded.

James C. Height, 44 IBLA 240 (Dec. 11, 1979)

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2. Placer locations may be made by associations of claimants, limited in size to 20 acres for each individual claimant, up to a maximum of 160 acres.

Big Horn Calcium Co., 44 IBLA 289 (Dec. 26, 1979)

MINING CLAIMS--Continued

LODE CLAIMS

To determine whether there has been a discovery of a valuable mineral deposit within a lode claim there must be exposed within the limits of the claim a vein or lode bearing mineral of such quality and quantity as would induce a prudent man to expend his time and means with the expectation of developing a valuable mine.

United States v. Kingsley Ranch Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

United States v. Evelyn M. Higgins et al., 39 IBLA 88 (Jan. 26, 1979)

High assay samples alone are not evidence of a discovery. The nature of the samples yielding the high values must be considered. Where neither the date of the samples nor the nature of the samples submitted for assay is known, those assays cannot be considered as representative of a valuable mineral deposit within the limits of a mining claim.

United States v. Wallace W. Vass, 24 IBLA 209 (Apr. 1, 1976)

Occasional assay samples of material from a lode mining claim containing high values of gold are not conclusive evidence of a valid discovery. Other factors must be considered, such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values. To be meaningful, the samples must be representative of the mineral deposit, not simply selective showings of the best mineralization.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

As a prerequisite for the validity of a lode mining claim, there must be found within the limits of the claim a vein or lode of the quartz, or other rock in place, bearing mineral of such quantity and quality that a prudent person would expend his time and means with a reasonable prospect of success in developing a valuable mine. Evidence which merely shows that further exploration is needed to "discover" the valuable mineral deposit does not meet the prudent man test.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

In determining whether there has been a discovery of a valuable mineral deposit under the mining laws on a lode mining claim factors such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values must be considered.

United States v. Bradley F. Dunham, 29 IBLA 105 (Mar. 18, 1977)

"Lode" and "placer." A placer mining claim has been defined as ground within defined boundaries which contain mineral in its earth, sand, or gravel; ground that includes valuable deposits not in place, that is, not fixed in rock, but which are in a loose state, and may in most cases be collected by washing or amalgamation without milling. Whereas, a lode or vein has been defined as any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock; a body of mineral or mineral bearing rock within defined boundaries.

When mining claims have been located as placer claims for perlite which lies in a "blanket" or "pancake" in an almost horizontal plane and in its original state is encased between two different types of rock, where in places, the upper rock or layer has been eroded away leaving the perlite exposed at the surface and in other places on the claims the upper layer is still present, and the mining of the perlite is characterized as essentially a hard rock operation, and when it is first extracted from the ground and then processed or, in effect, milled to produce a marketable product, the perlite is properly classified as a lode deposit which will not sustain a placer location.

United States v. Estate of Arthur C. W. Bowen (Deceased), and Superior Perlite Mines, Inc. (Contestees), Harborlite Corp. (Intervenor), 38 IBLA 350 (Jan. 8, 1979)

MARKETABILITY

The "marketability rule" requiring a demonstration of present marketability at a profit is (and always has been) applicable to all mining claims, whether for base metals or for precious minerals.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

The "marketability test"--i.e., to qualify as a valuable mineral deposit, the mineral deposit must be extractable, removable and marketable at a profit--is a complement to the "prudent man rule." The fact that a mineral such as gold possesses intrinsic value does not prevent the application of the marketability test to determine whether the deposit of such a mineral constitutes a discovery of a valuable mineral deposit under the mining laws.

United States v. Jack C. Harris, Jill L. Harris, 38 IBLA 137 (Nov. 29, 1978)

MILLSITES

Where a millsite is not being used for mining or milling purposes in connection with a mining claim owned by the owner of the millsite, and at the time of contest there is no quartz mill or reduction works on the site, the millsite must be declared null and void.

United States v. Aloys A. Dietemann and Doris E. I. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

United States v. Wayne E. Highley, 30 IBLA 21 (Apr. 7, 1977)

Where millsites are not used for mining or milling purposes in conjunction with a mining claim, and where no quartz or reduction works exist on the millsites, the millsites are properly declared null and void.

United States v. Robert A. Bubke (Registered Agent), Valuminco, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

MINING CLAIMS--Continued

MILLSITES--Continued

Although a millsite may be declared invalid when its only use is in connection with a mining claim which is declared invalid, a millsite can be contested separately and declared invalid when evidence establishes it is not being used for mining or milling purposes, independent of the issue of the validity of the mining claim.

A millsite is used for mining or milling purposes if the use is a function or utility intimately associated with the removal, handling or treatment of the ore from the vein or lodes. Some step in or directly connected with the process of mining or some feature of milling must be performed on the millsite.

Where the evidence presented at a hearing demonstrates a lode claim to be valid, a contest against a millsite held by the owner of the lode claim will be dismissed if the millsite is being used or occupied for mining or milling purposes.

United States v. John R. Parsons, 33 IBLA 326 (Jan. 16, 1978)

A mineral claimant who has not made a discovery of a valuable mineral deposit within the limits of his lode or placer mining claims is not the proprietor of a "vein, lode or placer" within the context of 30 U.S.C. § 42 (1970), and cannot establish any right to a millsite claim based on such unperfected mining locations.

United States v. Ray Paden, 33 IBLA 380 (Jan. 25, 1978)

A mining claim or millsite located on land at a time when the land is withdrawn from mineral location is properly declared null and void.

Floyd G. Brown, 35 IBLA 110 (May 15, 1978)

Where the proprietor of a lode mining claim seeks to obtain patent for a millsite in connection with his lode claim, the millsite claim is properly declared invalid if it is unsupported by any use or occupation of the claimed land for mining or milling purposes and does not contain a quartz mill or reduction works.

A millsite claim located under the "quartz mill or reduction works" provision of 30 U.S.C. § 42 (1976) is properly rejected where no quartz mill or reduction works has been located on the claimed lands and no construction appears to be in progress.

A millsite claim must be declared invalid where the land upon which it is located is mineral in character.

United States v. Silver Chief Mining Co., Inc., 40 IBLA 244 (Apr. 16, 1979)

Three classes of millsites are authorized by 30 U.S.C. § 42 (1976): (1) those occupied by the proprietor of a vein or lode for mining and milling purposes; (2) those that have thereon quartz mills or reduction works; and (3) those that are used by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim.

The validity of an independent millsite claim, i.e., one not located ancillary to a valid mining claim, depends upon three factors: (1) the claim must be used in good faith for a mining or milling purpose; (2) it must contain a quartz mill or reduction works on the premises for processing mineral material from a vein or lode; and (3) it must be operated in an ongoing and more or less continuous manner for custom work. Where a quartz mill or reduction works is operated sporadically only as a "spare time" enterprise, the millsite is properly declared invalid.

United States v. Ray Paden, 44 IBLA 253 (Dec. 19, 1979)

MINERAL SURVEYS

Where an offer for an oil and gas lease describes lands by reference only to the rectangular survey system, without reference to the fact that part of these unpatented lands are also within a mineral survey, the offer will be regarded as including the lands within the mineral survey if it is clear from the offer that the offeror so intended.

Bill J. Maddox, 34 IBLA 278 (Apr. 17, 1978)

PATENT

The Department of the Interior has the authority and the duty to contest mining claims which it believes are invalid, notwithstanding that the claims are located in a National Forest and the Forest Service has no objection to approval of a patent application.

When one whose application for patent for a mining claim has been rejected requests a hearing to present evidence on the controlling issues of fact involved in the rejection of the application, such request must be granted.

If mining claimants possess the essential qualifications as to citizenship, and if they peacefully entered and occupied the land and discovered a valuable mineral deposit thereon at a time when both the land and the mineral were subject to appropriation under the mining laws, and if they thereafter remained in peaceful, exclusive possession and openly worked the claim for the period prescribed by the State statute of limitations for mining claims, and expended at least the minimum amount of money prescribed by law in the improvement of the claim, they have thereby established their right to receive a patent pursuant to 30 U.S.C. § 38 (1970) notwithstanding their error in locating and recording their claim under the statute pertaining to placer locations rather than properly under the lode mining law, assuming that there has been no intervening loss of discovery.

Estate of Arthur C. W. Bowen (Deceased), 18 IBLA 279 (Jan. 30, 1975)

Where a regulation requires that a mineral patent application be accompanied by a plat and field notes of a mineral survey executed subsequent to the date of location of the mining claim and a surveyor's report of expenditures and improvements, an application for mineral patent not accompanied by these documents is properly rejected without prejudice to applicant's right to file a proper application.

Walter Bartol, 19 IBLA 82 (Mar. 3, 1975)

Where on appeal from a decision sustaining the Government's challenge of a patent application it is determined that the alleged ground of invalidity was one not raised in the complaint or at the hearing, the decision rejecting the patent application will be set aside and the Government will be afforded an opportunity to amend its complaint to embrace the charge. Where the Government does amend its complaint the

MINING CLAIMS--Continued

PATENT--Continued

mineral claimant will be granted the right to an evidentiary hearing on such issue.

United States v. Robert E. McElwaine, 26 IBLA 20
(July 7, 1976)

The execution of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident of and physically within the land district in which the mining claim is located, is unauthorized, and such an application is invalid. The defect cannot be cured by an amendment signed by the claimant.

Floyd E. Bleak, 26 IBLA 378 (Sept. 9, 1976)

The Secretary of the Interior is not authorized to issue a patent to a mining claim until the requirements of the law have been met.

United States v. Fred and Eileen Garner, 30 IBLA 42
(Apr. 18, 1977)

United States v. Evelyn M. Higgins et al., 39 IBLA 88
(Jan. 26, 1979)

A mining claimant must prove a discovery under the prudent man test, including that the mineral can be extracted, removed and marketed at a profit.

United States v. Pittsburgh Pacific Co., 30 IBLA 388
84 I.D. 282
(June 15, 1977)

A single application for patent under the mining laws may not include noncontiguous placer mining claims.

Charles House, Mrs. Leonard Skinner, 33 IBLA 308
(Jan. 10, 1978)

Although in certain circumstances a rebuttable presumption of a mining claim's validity may be indulged, the presumption does not arise to support an application for patent of the fee title. The patent applicant is the movant party, and as such it is his obligation to make a satisfactory showing of his entitlement under the law and regulations.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. Where a patent application regulation requires "full, true, and complete abstracts," and the surface of the mining claim has not been patented, the processing of patent applications accompanied only by limited abstracts is properly suspended, pending compliance with the regulation. Where, however, the surface of the mining claim has been patented, e.g., under the Stock-Raising Homestead Act, 43 U.S.C. §§ 291-300 (1970), the abstract generally need only reflect transactions affecting the mineral estate. A certificate of title is acceptable in lieu of an abstract in either situation.

Kerr-McGee Nuclear Corp. et al., 41 IBLA 197 (June 22, 1979)

MINING CLAIMS--Continued

PATENT--Continued

Where a mining claimant attempts to establish his location of a mining claim containing common variety minerals by invoking the terms of 30 U.S.C. § 38 (1976) and fails to complete the statutory period for holding and working his claim prior to July 23, 1955, BLM may properly hold such claim to be null and void.

Charles House, Mrs. Leonard Skinner, 42 IBLA 368
(Sept. 11, 1979)

A party filing notice of alleged adverse mining claims with BLM is properly advised that he is required within 30 days of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession to the claims as between him and his rival claimant. During the pendency of this action, patent proceedings will be stayed.

BLM's dismissal of a protest against the issuance of a mineral patent will be affirmed where the defects in the application alleged by the protestant do not exist or are curable. An application is not defective because it refers to a previously filed application containing necessary information in lieu of including the information itself, or because the notice of application did not mention adjoining claim holders, or because the abstract of title submitted with it does not recognize the existence of adverse claims. Where the patent applicant has contracted with another party to give it a 25-percent interest in the claims, but has not transferred this interest to it by deed or other instrument of record, it is not improper for the applicant to apply as the sole applicant. If the interest is subsequently legally transferred, and the transfer is recorded, the application may be amended to reflect this fact.

John E. Meadows, 43 IBLA 35 (Sept. 12, 1979)

The evidence of title, required by 43 CFR 3862.1-3 to be submitted in support of a mineral patent application need reflect only documents such as deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each location. It is not necessary that the title data reflect in addition those deeds, instruments, or actions otherwise relating to the land in the mining claim.

Kerr-McGee Nuclear Corp. et al. (On Reconsideration), 43 IBLA 348 (Oct. 29, 1979)

PATENT IMPROVEMENTS

Where in a patent application for a group of claims, pro rata credit for the value of a common, offsite improvement is to be attributed to each claim, it must be shown that the improvement was subsequent to the location of each claim so credited, and that the improvement is essential to the practical development and actually facilitates the extraction of ore from each claim.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

PLACER CLAIMS

A single application for patent under the mining laws may not include noncontiguous placer mining claims.

Charles House, Mrs. Leonard Skinner, 33 IBLA 308
(Jan. 10, 1978)

MINING CLAIMS--Continued

PLACER CLAIMS--Continued

No location of a placer mining claim on Federal lands may include more than 20 acres for each individual claimant.

United States of America v. David L. King et al., 34 IBLA 15 (Feb. 10, 1978)

No location of a placer mining claim may include more than 20 acres for each individual claimant. Where claims in excess of 20 acres are located by an association of locators and there is no evidence of a qualifying discovery of minerals prior to the claim's conveyance to a single individual, the claim is void, and any subsequent discovery will serve only to validate a claim of 20 acres.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

"Lode" and "placer." A placer mining claim has been defined as ground within defined boundaries which contain mineral in its earth, sand, or gravel; ground that includes valuable deposits not in place, that is, not fixed in rock, but which are in a loose state, and may in most cases be collected by washing or amalgamation without milling. Whereas, a lode or vein has been defined as any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock; a body of mineral or mineral bearing rock within defined boundaries.

When mining claims have been located as placer claims for perlite which lies in a "blanket" or "pancake" in an almost horizontal plane and in its original state is encased between two different types of rock, where in places, the upper rock or layer has been eroded away leaving the perlite exposed at the surface and in other places on the claims the upper layer is still present, and the mining of the perlite is characterized as essentially a hard rock operation, and when it is first extracted from the ground and then processed or, in effect, milled to produce a marketable product, the perlite is properly classified as a lode deposit which will not sustain a placer location.

United States v. Estate of Arthur C. W. Bowen (Deceased), and Superior Perlite Mines, Inc. (Contestees), Harborlite Corp. (Intervenor), 38 IBLA 390 (Jan. 8, 1979)

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2. Placer locations may be made by associations of claimants, limited in size to 20 acres for each individual claimant, up to a maximum of 160 acres.

Big Horn Calcium Co., 44 IBLA 289 (Dec. 26, 1979)

POSSESSORY RIGHT

A mining claim located in a powersite at a time when the land was withdrawn from mineral entry is null and void ab initio. However, such a claim embracing a discovery may still be valid under a new location made by holding and working the claim pursuant to 30 U.S.C. § 38 (1970) while the land was open to mining location under the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 *et seq.* (1970).

Under 30 U.S.C. § 38 (1970), holding and working a mining claim in open, notorious, adverse possession for the period of time required to establish adverse possession of mining claims, during which time the land is open to mining location, is tantamount to a new location or relocation, dispensing with proof of valid notices. However, sec. 38 does not obviate the necessity of a discovery of a valuable mineral in order to establish a valid claim.

MINING CLAIMS--Continued

POSSESSORY RIGHT--Continued

Arthur E. Boone, 32 IBLA 305 (Sept. 30, 1977)

Where a corporation allegedly acquired a group of unpatented mining claims, but the instruments of conveyance and the abstract of title are subject to various objections by the Government's title examiner, which the corporation finds are difficult or impossible to cure, the corporation nonetheless may receive a patent to the claims pursuant to the Act of July 9, 1870 (R.S. § 2332; 30 U.S.C. § 38 (1970)), by demonstrating its qualifications under that Act.

Where it becomes necessary for a corporate applicant for mineral patent under R.S. § 2332, 30 U.S.C. § 38 (1970) to demonstrate that it and its predecessors have held and worked the subject mining claims for a specific term of years, the applicant may tack the predecessor's period of possession to its own if there was a privity of interest between them which was demonstrated by any agreement, conveyance or understanding, the purpose of which was to transfer the right and possession of the previous adverse claimant to the successor, and this is accompanied by actual delivery of possession.

An applicant for a mineral patent under 30 U.S.C. § 38 (1970) may be credited with actual possession and working of the claims for the period when the claims were occupied and worked by the claimant's lessee who recognized the title asserted by the claimant.

An applicant for a mineral patent under 30 U.S.C. § 38 (1970) may be credited with actual possession and working of the claims for the period when the claims were occupied and worked by others under a conditional contract of sale with the claimant, as well as the period after the claimant lawfully declared the contract forfeited but the putative purchasers continued to hold and work the claims, contending the continued validity of the sales contract, during the course of the claimant's litigation to eject them, which ultimately was successful.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977)
84 I.D. 990

In order for a mining claimant to maintain a possessory right in a claim under Arizona law, the locator must file within 90 days a copy of the location notice in the county in which the claim is located.

E. E. Wall, 34 IBLA 362 (May 1, 1978)

The holding of a mining claim and the diligent pursuance of mining activities on it does not relieve its owner of the obligation imposed by statute to file an affidavit of assessment work or a notice of intention to hold a mining claim.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

Where a corporate patent applicant can trace its ownership of the claim back through a series of conveyances to a mesne owner who had title to the claim quieted in her by the decree of a court of competent jurisdiction, there is no need to look behind the quiet title decree

MINING CLAIMS--Continued

POSSESSORY RIGHT--Continued

to an earlier break in the chain of title unless there is reason to believe that the interest which is unaccounted for was not disposed of by the litigation. However, a court decree which merely distributes the assets of a decedent's estate is not a "quiet title decree" in this context, and does not ordinarily foreclose the interests of third parties who hold the record title to mining claims.

Before a claimant may successfully invoke 30 U.S.C. § 38 (1976) to cure deficiencies in the method of location of, or title to mining claims, it must first be established that each of the claims is supported by a discovery of a valuable deposit of mineral, and that claimant and/or predecessors have "held and worked" each of the claims for the requisite period. Where these showings are disputed, notice and opportunity for a hearing must be afforded.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

In the absence of a specific regulation or policy directive specifying the type of proof necessary for recordation, the Bureau of Land Management should liberally consider attempts by a mining claimant under sec. 314 of the Federal Land and Policy Management Act to record notice of a mining claim where proof of recording cannot be made and 30 U.S.C. § 38 (1976) is relied upon for holding the claim, and before rejecting a filing for such a claim, BLM should request further evidence from the claimant which it would consider satisfactory. Such evidence should include at a minimum the name the claim is and has been known by, the name and address of the claimant, an adequate description of the claim, the type of claim, the time of holding and working the claim to meet a State's statute of limitations and, if possible, the date of the origin of claimant's title and facts as to continuation of possession of the claim, and any other information available showing a chain of title to the claimant and bearing upon the possession and occupancy of the claim for mining purposes, and other information which the Bureau of Land Management deems essential to meet the purposes of the recordation provision.

Philip Sayre, 42 IBLA 296 (Aug. 27, 1979)

A party filing notice of alleged adverse mining claims with BLM is properly advised that he is required within 30 days of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession to the claims as between him and his rival claimant. During the pendency of this action, patent proceedings will be stayed.

John B. Meadows, 43 IBLA 35 (Sept. 12, 1979)

POWERSITE LANDS

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Claims located prior to that date were not resuscitated by the Mining Claims Rights Restoration Act of 1955.

Beverly Krull, 25 IBLA 157 (June 10, 1976)

MINING CLAIMS--Continued

POWERSITE LANDS--Continued

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a group of mining claims on land within a powersite classification, where unrestricted placer mining on such land would most probably result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Boyd McGinn et al., 25 IBLA 188 (June 18, 1976)

Placer mining on claims located pursuant to the Mining Claims Rights Restoration Act will be prohibited where unrestricted mining activity would substantially interfere with other uses of the land.

United States v. Richard and Beverly Heisel, 26 IBLA 183 (Aug. 10, 1976)

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

David Loring Gackle, Darrel Douglas, 26 IBLA 209 (Aug. 18, 1976)

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

Lands which are covered by a license for a power project issued by the Federal Power Commission are not open to mineral location.

Raymond C. Gardner et al., 34 IBLA 179 (Mar. 10, 1978)

The preservation of important and critical habitats for wildlife is a use warranting the prohibition of mining from an area in accordance with the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1970); however, where the only use shown on eight mining claims is likely destruction of a dove nesting and breeding habitat which has produced only approximately .11 of 1 percent of the 1976 total hunters' kill of over 2-1/2 million doves in the State of Arizona and there is insufficient evidence to establish that the habitat is a critical and important habitat for the

MINING CLAIMS--Continued

POWERSITE LANDS--Continued

doves, an administrative law judge's decision to allow placer mining operations will be affirmed.

United States v. Mineral Economics Corp., 38 IBLA 258 (Mar. 30, 1978)

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Upton and William C. Wells, 38 IBLA 90 (Nov. 15, 1978)

Where a mining claim has been located pursuant to the Mining Claims Rights Restoration Act, 30 U.S.C. §§ 621-625 (1970), on land withdrawn for powersite, it is proper to prohibit placer mining if there is a likelihood of substantial interference with the use of the land for fishing, hunting, recreation, and the recovery of archaeological values.

The Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a (1970), does not require the granting of permission for placer mining operations on land within a powersite withdrawal where such operations would probably interfere with other uses of the land.

United States v. Edward J. Connolly, Jr., Idaho Fish and Game Department (Intervenor), 40 IBLA 30 (Mar. 15, 1979)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

United States v. Elbert Gassaway, 43 IBLA 382 (Oct. 31, 1979)

RECORDATION

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976, has not been filed within 90 days from the date of location is void, and the Department may not accept or give force to a notice of recordation filed after the 90-day period.

Effect of Failure to Record Timely Under Sec. 314(b), Federal Land Policy and Management Act of 1976, M-36889 (May 17, 1977) 84 I.D. 188

A mining claim located after Oct. 21, 1976, for which a notice of recordation required to be filed by sec. 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744) has not been filed within 90 days from the date of location is void, and no force and effect can be given to a notice of recordation filed after the 90-day period.

Southwestern Exploration Associates, 33 IBLA 240 (Dec. 28, 1977)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

The failure of a mining claimant to file the notice of recordation required by sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), cannot be excused on the basis of equitable estoppel where no discussion covering the 90-day requirement was had between the Department and appellant's representatives.

Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (Jan. 16, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded at the office of the Bureau of Land Management designated by the Secretary of the Interior, within 90 days after the date of location. By regulation the BLM State Offices are designated the proper offices for mining claim recordations.

Failure to record mining claims in accordance with sec. 314 of the Federal Land Policy and Management Act of 1976 is deemed conclusively to constitute abandonment of the claims. Filing the recordation documents in a Bureau of Land Management District Office, rather than in the proper State Office, the day before the expiration of the 90-day statutory deadline for recordation does not constitute timely recordation. In such circumstances, the BLM State Office properly rejected the recordations upon receipt of the documents after the 90-day deadline had passed.

Irwin W. Sweeney, 34 IBLA 205 (Mar. 23, 1978)

Pursuant to sec. 314(b) of the Federal Land Policy and Management Act of 1976, a copy of the official record of the notice of location of a mining claim must be filed within 90 days after location of the claim. In computing this period the date of location is not counted but the last day of the period is. Thus, when a claim is located on Sept. 1, 1977, a notice filed on Dec. 1, 1977, is 1 day late, Nov. 30, 1977, being the 90th day.

Robert Thompson, 34 IBLA 319 (Apr. 24, 1978)

In order for a mining claimant to maintain a possessory right in a claim under Arizona law, the locator must file within 90 days a copy of the location notice in the county in which the claim is located.

R. E. Webb, 34 IBLA 362 (May 1, 1978)

"Date of location." Date of location of a mining claim is no later than the date on which the claimant certified he had complied with all requirements of law, as indicated by his signature on the notice and certificate of location. The date of recording the location notice of a mining claim in the county records has no bearing on the "date of location" of the claim, from which the 90-day period for recordation in BLM under FLPMA begins.

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded at the office of the

MINING CLAIMS--Continued

RECORDATION--Continued

Bureau of Land Management designated by the Secretary of the Interior, within 90 days after the date of location. By regulation the BLM State Offices are designated the proper offices for mining claim recordations each within its area of jurisdiction. BLM State Offices properly refuse to record notices of location of mining claims not received by the proper BLM State Office before the end of the 90-day period set by statute.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded in the proper office of the Bureau of Land Management within 90 days from the date of location, not within 90 days from the date the claims were recorded under State law. BLM properly refuses to accept for recordation notices of location filed after the 90-day period.

Foyle Mason, 35 IBLA 40 (May 8, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h), not the date on which the owner completes the last step in locating and recording a mining claim as required by State law.

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

The holding of a mining claim and the diligent pursuance of mining activities on it does not relieve its owner of the obligation imposed by statute to file an affidavit of assessment work or a notice of intention to hold a mining claim.

Paul S. Couper, 35 IBLA 112 (May 15, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

R. Wade Holder et al., 35 IBLA 169 (May 22, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(b).

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

MINING CLAIMS--Continued

RECORDATION--Continued

Where certificates of location as to mining claims have not been filed (received and date stamped) at the proper Bureau of Land Management office within 90 days of the date of location, as required by the regulation, 43 CFR 3833.1-2(b), for claims located after Oct. 21, 1976, the Bureau must refuse to accept the certificates and declare the claims to be null and void.

Neither the Federal Land Policy and Management Act of 1976 nor the applicable regulations make provision for relief where the death of an employee instructed to file certificates of location for the mining claims of his employer, as required by 43 CFR 3833.1-2(b), causes the filing to be more than 90 days after the date of location of the claims.

E. R. Fosser, 36 IBLA 379 (Aug. 31, 1978)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, the owner of an unpatented mining claim must file a notice of intention to hold his claim prior to Dec. 31 of the calendar year following the date of location of such claim, or the claim shall be deemed conclusively to have been abandoned.

Donald H. Little, 37 IBLA 1 (Sept. 6, 1978)

Juan Munoz, 39 IBLA 72 (Jan. 24, 1979)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1744 (Supp. 1978), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim located after Oct. 21, 1976, is void, and any later filing of the notice is invalid.

G. Antolini & Son, 37 IBLA 13 (Sept. 8, 1978)

William E. Rhodes, 38 IBLA 127 (Nov. 22, 1978)

Lawrence A. Landry, 40 IBLA 212 (Apr. 10, 1979)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2, the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, shall, within 90 days after the date of location of such claim, file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

James F. Giancarlo, 37 IBLA 88 (Sept. 22, 1978)

Leland H. Bray, 37 IBLA 120 (Oct. 3, 1978)

Roy M. Byram, 39 IBLA 32 (Jan. 15, 1979)

Phillip M. Gardiner et al., 41 IBLA 391 (July 28, 1979)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not statute enacted by Congress is constitutional.

Appellant's prior filings of mining claim documents with BLM do not relieve him of filing obligations imposed by sec. 314 of Federal Land Policy and Management Act and implementing regulations at 43 CFR Subpart 3833, which are binding.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3822.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim, or the claim is deemed abandoned and void.

Dale C. DeLor, 40 IBLA 88 (Mar. 22, 1979)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. A notice must be received and date stamped in the BLM office within the 90-day period to be timely filed.

M. J. Reeves, 41 IBLA 92 (June 4, 1979)

Carl Dowler, Roy Stewart, 44 IBLA 192 (Nov. 30, 1979)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located after Oct. 21, 1976, is not supported annually by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement there was no intent to abandon and that failure to file was an oversight.

Nuclear Power and Energy Co. and B-2, Inc., 41 IBLA 142 (June 14, 1979)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

John C. Schandelmeier, 42 IBLA 240 (Aug. 22, 1979)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3822.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim, or the claim is deemed abandoned and void.

"Date of Location." Under 43 CFR 3833.0-5(h), for claims located in Nevada, "date of location" is the date indicated in the notice of location or discovery posted on an unpatented mining claim.

Jim Spicer, 42 IBLA 288 (Aug. 27, 1979)

Sec. 314 of the Federal Land Policy and Management Act of 1976 was enacted to establish a Federal recording system for mining claims to facilitate Federal land use planning and management. Failure to comply with the mandatory filing requirements constitutes abandonment of the claim and the land reverts to the status of public domain.

In the absence of a specific regulation or policy directive specifying the type of proof necessary for recordation, the Bureau of Land Management should liberally consider attempts by a mining claimant under sec. 314 of the Federal Land and Policy Management Act to record notice of a mining claim where proof of recording cannot be made and 30 U.S.C. § 38 (1976) is relied upon for holding the claim, and before rejecting a filing for such a claim, BLM should request further evidence from the claimant which it would consider satisfactory. Such evidence should include at a minimum the name the claim is and has been known by, the name and address of the claimant, an adequate description of the claim, the type of claim, the time of holding and working the claim to meet a State's statute of limitations and, if possible, the date of the origin of claimant's title and facts as to continuation of possession of the claim, and any other information available showing a chain of title to the claimant and bearing upon the possession and occupancy of the claim for mining purposes, and other information which the Bureau of Land Management deems essential to meet the purposes of the recordation provision.

MINING CLAIMS--Continued

RECORDATION--Continued

Phillip Sayer, 42 IBLA 296 (Aug. 27, 1979)

The regulation, 43 CFR 3833.2-1(b)(1), requiring evidence of assessment work to be filed prior to Dec. 31 of the year following location of the claim, is mandatory. Failure to comply therewith must result in a finding that the claim has been abandoned.

Donald L. Fulghum, 42 IBLA 338 (Aug. 30, 1979)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location of the claim is the date as defined in 43 CFR 3833.0-5(h).

Charlie Carpal, Walter Peck, and Edward Porzansky, 43 IBLA 10 (Sept. 11, 1979)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where appellants timely file for record an "amended" location notice, accompanied by the original location notice which is untimely on its face, the mining claim is properly deemed abandoned as to the original location, but not as to the "amended" claim if it is a relocation of the claim under the law.

Walter T. Paul, James H. Meyer, 43 IBLA 119 (Sept. 24, 1979)

Since an amended notice merges with the original notice, the filing of the amended notice, for purposes of recordation under either sec. 8 of the Mining in the Parks Act, 90 Stat. 1342, 1343, 16 U.S.C. § 1907 (1976), or sec. 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 2769, 43 U.S.C. § 1744 (1976), together with such other information required by the applicable regulations, constitutes compliance with the recording requirements of those Acts.

R. Gail Tibbetts et al., 43 IBLA 210 (Oct. 5, 1979)
86 I.D. 538

MINING CLAIMS--Continued

RECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Dec. 14, 1977, and the filing fee therefor is not paid to BLM until Feb. 10, 1978, the recordation date of the notice is Feb. 10, 1978.

Joe B. Cashman, 43 IBLA 239 (Oct. 10, 1979)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Sept. 30, 1977, and the filing fee therefore is not paid to BLM until July 18, 1978, the recordation date of the notice of location is July 18, 1978. In the circumstances, the evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim must be filed in the proper BLM office on or before Oct. 22, 1979, pursuant to 43 CFR 3833.2-1(a). Duly promulgated regulations have the force and effect of law and are binding on the Department.

NRG Mining, Inc., 44 IBLA 126 (Nov. 27, 1979)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to file such notice shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

Raymond W. Quigley, 44 IBLA 250 (Dec. 19, 1979)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before the last day of the calendar year following the year the claim was recorded with BLM, the claim is properly deemed void.

Velda Waters, 44 IBLA 272 (Dec. 26, 1979)

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Faith C. Hartman, 44 IBLA 310 (Dec. 31, 1979)

MINING CLAIMS--Continued

RELOCATION

On petition for reconsideration, the assertion of rights to a mining claim under an Aug. 1966 location does not demonstrate error in or require reconsideration of this Board's decision, which affirmed that a mining claim located in 1969 for the same land, after the land was withdrawn from mineral location in Oct. 1968, was null and void ab initio. Neither this Board's decision initially or on petition affects petitioner's rights, if any, under such a prior location.

R. C. Jim Townsend (On Reconsideration), 18 IBLA 407 (Feb. 10, 1975)

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970), (2) there are no intervening rights, (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable State statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 *et seq.*, and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio. The finding that appellants have no rights under Sept. 1974 locations does not affect any rights which may have been deeded to them by the holder of a 1952 claim located prior to the time the land was withdrawn from mineral locations.

W. B. and G. H. Strickler, 27 IBLA 267 (Oct. 26, 1976)

Where a mining claimant alters the legal description in the location notice for his "Claim A," so that it now describes land previously embraced by a portion of his "Claim B," which was void ab initio as a matter of law, the alteration of "Claim A" must be considered a relocation rather than an amendment.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 16, 1978)

Mining claims on land subsequently withdrawn from mineral entry are not subject to relocation, despite failure of the original locators to do assessment work, because relocation by another party is of necessity adverse to the prior location.

Edward T. Dwyer, 38 IBLA 144 (Nov. 30, 1978)

For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location. To the extent, however, that an amended location merely furthers rights acquired by a valid subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights will not prevent the amended location from relating back to the original location.

Since an amended notice merges with the original notice, the filing of the amended notice, for purposes of recordation under either sec. 8 of the Mining in the Parks

MINING CLAIMS--Continued

RELOCATION--Continued

Act, 90 Stat. 1342, 1343, 16 U.S.C. § 1907 (1976), or sec. 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 2769, 43 U.S.C. § 1744 (1976), together with such other information required by the applicable regulations, constitutes compliance with the recording requirements of those Acts.

Except for claims held under 30 U.S.C. § 38 (1976), a failure to record a mining claim as required by State law, coupled with a withdrawal of the land prior to any curative action, invalidates the claim, and thus precludes subsequent amendment of the claim.

An oral transfer of a mining claim, though contrary to the statute of frauds, will not serve to invalidate the claim, and a person subsequently seeking to record the claim will be afforded the opportunity to prove that the transfer actually occurred.

Where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. Gail Tibbetts et al., 43 IBLA 210 (Oct. 5, 1979)
86 I.D. 538

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Where there are factual questions relating to whether refilings subsequent to a withdrawal were in the nature of an "amended locations" or whether they constituted "relocations," the matter must be referred for a hearing to allow the claimant the opportunity to show that subsequent filings have been amended locations, and that it is thus the successor in an unbroken chain of title dating back to the original location.

American Resources, Ltd., 44 IBLA 220 (Dec. 11, 1979)

"Relocation." A relocation of a mining claim is best defined as a location adverse to the prior locations.

"Amended Location." An amended location of a mining claim is best defined as one in furtherance of an earlier, valid location, and a subsequent location referring to the same parcel of land, filed by the same party, changing only the name of the claim, will be deemed an amended location.

An "amended location" generally relates back, where no adverse rights have intervened, to the date of the original location, but where there has been a withdrawal, a subsequent location relates back only to the extent that such a location merely furthers rights acquired by a valid subsisting location and does not embrace additional or new land.

When on appeal from a Bureau of Land Management decision, information is submitted upon which it is alleged that a location relates back to a prewithdrawal location, which information has not been evaluated by BLM, the decision may be set aside and the case remanded.

James C. Haight, 44 IBLA 240 (Dec. 11, 1979)

MINING CLAIMS--Continued

SPECIAL ACTS

If mining claimants possess the essential qualifications as to citizenship, and if they peacefully entered and occupied the land and discovered a valuable mineral deposit thereon at a time when both the land and the mineral were subject to appropriation under the mining laws, and if they thereafter remained in peaceful, exclusive possession and openly worked the claim for the period prescribed by the State statute of limitations for mining claims, and expended at least the minimum amount of money prescribed by law in the improvement of the claim, they have thereby established their right to receive a patent pursuant to 30 U.S.C. § 38 (1970) notwithstanding their error in locating and recording their claim under the statute pertaining to placer locations rather than properly under the lode mining law, assuming that there has been no intervening loss of discovery.

Estate of Arthur C. W. Bowen (Deceased), 18 IBLA 375 (Jan. 30, 1975)

Where at a hearing held pursuant to sec. 7 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

The provision in 43 CFR 3825.1(b) that failure to pay annual rental on or before the anniversary date of a mining claim located in the Papago Indian Reservation "shall be deemed sufficient grounds for invalidating the claim" is directory, not mandatory. Where the mining claimant does not pay rental for 2 years on two claims and is 1-1/2 years late on other claims, and where he has not paid the rental prior to receiving decisions from the Bureau of Land Management holding the claims invalid, the mining claims must be held invalid.

Louis P. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

Where a corporation allegedly acquired a group of unpatented mining claims, but the instruments of conveyance and the abstract of title are subject to various objections by the Government's title examiner, which the corporation finds are difficult or impossible to cure, the corporation nonetheless may receive a patent to the claims pursuant to the Act of July 9, 1870 (R.S. § 2332; 30 U.S.C. § 38 (1970)), by demonstrating its qualifications under that Act.

Where it becomes necessary for a corporate applicant for mineral patent under R.S. § 2332, 30 U.S.C. § 38 (1970) to demonstrate that it and its predecessors have held and worked the subject mining claims for a specific term of years, the applicant may tack the predecessor's period of possession to its own if there was a privity of interest between them which was demonstrated by any agreement, conveyance or understanding, the purpose of which was to transfer the right and possession of the previous adverse claimant to the successor, and this is accompanied by actual delivery of possession.

An applicant for a mineral patent under 30 U.S.C. § 38 (1970) may be credited with actual possession and working of the claims for the period when the claims were occupied and worked by the claimant's lessee who recognized the title asserted by the claimant.

An applicant for a mineral patent under 30 U.S.C. § 38 (1970) may be credited with actual possession and working of the claims for the period when the claims were occupied and worked by others under a conditional contract of sale with the claimant, as well as the period after the claimant lawfully declared the contract forfeited but the putative purchasers continued to hold and work the claims, contending the continued validity of the sales contract, during the course of the claimant's litigation to eject them, which ultimately was successful.

Alaska Placer Co., 33 IBLA 187 (Dec. 21, 1977) 84 I.D. 990

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

The holder of a mining claim located within the Papago Indian Reservation under sec. 3 of the Act of June 18, 1934, 48 Stat. 984 (repealed, Act of May 27, 1955, 69 Stat. 67), is required to make the annual rental payment for the claim in advance (on or before the anniversary date of location of the claim). A decision invalidating a claim will be upheld where proceedings to void the claim are not initiated until several months after the rental due date, there is no evidence the rent was paid for the year, and appellant admits the failure to pay was an oversight.

John A. Cooley, 36 IBLA 245 (Aug. 14, 1978)

Before a claimant may successfully invoke 30 U.S.C. § 38 (1976) to cure deficiencies in the method of location of, or title to mining claims, it must first be established that each of the claims is supported by a discovery of a valuable deposit of mineral, and that claimant and/or predecessors have "held and worked" each of the claims for the requisite period. Where these showings are disputed, notice and opportunity for a hearing must be afforded.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

Where it is determined that a person or association, they and their grantors, have met the fundamental requirements of the possessory rights section of the mining laws, 30 U.S.C. § 38 (1976), *i.e.*, where they have held and worked their claims in this instance for the qualifying period of 5 years under the Arizona statute of limitations covering actions to recover real property, they are entitled to a patent to those areas where there are no conflicting mining claims, regardless of the fact that the claims were improperly located as placer claims for perlite lode deposits.

United States v. Estate of Arthur C. W. Bowen (Deceased), and Superior Perlite Mines, Inc. (Contestees), Harborlite Corp. (Intervenor), 38 IBLA 390 (Jan. 8, 1979)

The collection of a yearly rental pursuant to the provisions of 43 CFR 3825.1(b) for a mining claim situated within the Papago Indian Reservation in no way presages the existence of a valid mining claim based on the discovery of a valuable mineral deposit.

United States v. J. E. Wilson, 44 IBLA 1 (Nov. 6, 1979)

SPECIFIC MINERAL(S) INVOLVED

Generally

A valuable deposit of geodes, round stones with crystalline centers and composed of recognized mineral substances, which possess an economic value in trade and the ornamental arts, and which are being removed by actual mining operations, is subject to location under the mining laws.

United States v. Glenn C. Bolinder and L. C. Turner, et al., 28 IBLA 187 (Dec. 6, 1976) 83 I.D. 609

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978) 85 I.D. 171

Bog Iron Ore

Bog iron ore, used as a soil conditioner or soil amendment, is not a locatable mineral deposit in the absence of a showing that it meets the test of *United States v. Bunkowski*, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), *i.e.*, it is found to be not just a physical amendment to the soil but a chemical amendment which alters and improves soil or plant chemistry.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

Clay

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be a common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

In a Government contest challenging the validity of mining claims located for a clay-type material, an adequate prima facie case is established where there are expert witness opinions that the deposit is only a common clay or shale and it cannot meet refractory standards. The contestees then must go forward with evidence to rebut the Government's case with a preponderance of the evidence.

"Common Clay." A "common clay" not locatable under the mining laws does not include clay having exceptional qualities which meets refractory and other quality

MINING CLAIMS--Continued

SPECIFIC MINERAL(S) INVOLVED--Continued

Clay--Continued

standards for highgrade ceramic products or other products requiring a high refractoriness, or which is useful for certain industrial uses, such as in the oil and oil well drilling industries, outside the manufacture of general clay products. It does include, however, clay usable or used only for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, and for pottery and ordinary earthenware and stoneware. The fact industrial and technological changes may make a certain clay deposit valuable for a given major manufacturer of brick, tile and other clay products, because it meets its peculiar specifications for blends with other raw materials, does not warrant a change from Departmental precedents and a strong Congressional policy establishing that clay usable only for such purposes is a common clay not locatable under the mining laws.

United States v. Thomas J. Peck et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

Feldspar

Ground feldspar, used as a soil conditioner or soil amendment, is not a locatable mineral deposit under the general mining laws in the absence of a showing that the mineral meets the test of *United States v. Bunkowski*, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), namely, that the mineral is found to be not just a physical amendment to the soil, but rather a chemical amendment which alters and improves soil or plant chemistry.

United States v. Robert W. Deal, 23 IBLA 378 (Feb. 4, 1976)

Gold

The "marketability test"--*i.e.*, to qualify as a valuable mineral deposit, the mineral deposit must be extractable, removable and marketable at a profit--is a complement to the "prudent man rule." The fact that a mineral such as gold possesses intrinsic value does not prevent the application of the marketability test to determine whether the deposit of such a mineral constitutes a discovery of a valuable mineral deposit under the mining laws.

United States v. Jack C. Harris, Jill L. Harris, 38 IBLA 137 (Nov. 29, 1978)

Water

Water is not a mineral which is locatable under the general mining law.

Robert L. Beery et al., 25 IBLA 287 (June 28, 1976) 83 I.D. 249

SURFACE USES

If a mining claim is located on or after July 23, 1955, it is subject, prior to the issuance of patent, to the right of the United States to manage surface resources or the surface to the extent necessary for access to adjacent land. 30 U.S.C. § 612 (1970).

J. Bernard Roberts, 21 IBLA 204 (July 30, 1975)

MINING CLAIMS--Continued

SURFACE USES--Continued

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a group of mining claims on land within a powersite classification, where unrestricted placer mining on such land would most probably result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Boyd McGinn et al., 25 IBLA 188 (June 18, 1976)

A verified statement required under sec. 5 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 613 (1970), is properly rejected when the mining claim in connection with which it is filed, is declared to be null and void ab initio because it was located on land withdrawn from mineral location for power purposes prior to the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 *et seq.* (1970), and the land was segregated for purposes other than power development at that time and continuously thereafter.

Roy B. Cummins, 26 IBLA 223 (Aug. 17, 1976)

In a proceeding under sec. 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the use and management of the surface and its resources on certain mining claims, it is incumbent upon the holder of a claim to demonstrate a discovery of a valuable mineral deposit within the claim as of the time of the Act, and also at the time of the hearing.

Under sec. 5 of the Surface Resources Act of July 23, 1955, the effect of a decision that no mineral discovery has been shown is to permit the Government to manage and dispose of the vegetative and other surface resources without disturbing claimant's right to develop his mining claims by using the subsurface and surface to the extent necessary to conduct his mining operations.

United States v. A. G. Bartell, 31 IBLA 47 (June 23, 1977)

The location of a mining claim simply to maintain a road and insure access to other claims beyond is not a legitimate purpose within the scope or intention of the general mining law.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

Where a mining claim has been located pursuant to the Mining Claims Rights Restoration Act, 30 U.S.C. §§ 621-625 (1970), on land withdrawn for powersite, it is proper to prohibit placer mining if there is a likelihood of substantial interference with the use of the land for fishing, hunting, recreation, and the recovery of archaeological values.

The Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a (1970), does not require the granting of permission for placer mining operations on land within a

MINING CLAIMS--Continued

SURFACE USES--Continued

powersite withdrawal where such operations would probably interfere with other uses of the land.

United States v. Edward J. Connolly, Jr., Idaho Fish and Game Department (Intervenor), 40 IBLA 30 (Mar. 15, 1979)

A bond filed by a mining claim owner, covering lands patented under the Stock-Raising Homestead Act of Dec. 29, 1916, *as amended*, 43 U.S.C. §§ 291-301 (1970), need only be set in an amount to cover damages to crops, improvements, and the value of the land for grazing purposes within the limits of the mining claim. The *ad damnum* of the bond does not have to be sufficient to cover damages caused by a disruption of the surface owner's entire grazing operation.

Where surface owners object to the amount of a bond, submitted to the Bureau of Land Management under sec. 9 of the Stock-Raising Homestead Act of Dec. 29, 1916, *as amended*, 43 U.S.C. § 299 (1970), as being inadequate in amount, request a hearing thereon, but fail to tender any evidence which would impel the conclusion that a hearing is likely to be productive and meaningful, the request for a hearing is properly denied.

The owner of a patented stock-raising homestead, in which the minerals have been reserved to the United States under the Act of Dec. 29, 1916, *as amended*, has a sufficient adverse interest under 43 CFR 4.450-1, to initiate a contest against a mining claimant, alleging lack of discovery of valuable minerals.

The issue of whether a mining claim has been perfected by discovery of available mineral has no place in a proceeding to determine whether the amount of a stock-raising homestead bond is sufficient.

Elmer Silvera et al., 42 IBLA 11 (July 25, 1979)

TITLE

Under California law, when a mining claim is purchased by a husband using community property funds, even though title is taken in the husband's name alone, a gift to the husband will not be presumed in lieu of other evidence and the wife may be considered a qualified applicant for purposes of the Mining Claims Occupancy Act, 30 U.S.C. § 701 *et seq.* (1970).

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. Where a patent application regulation requires "full, true, and complete abstracts," and the surface of the mining claim has not been patented, the processing of patent applications accompanied only by limited abstracts is properly suspended, pending compliance with the regulation. Where, however, the surface of the mining claim has been patented, *e.g.*, under the Stock-Raising Homestead Act, 43 U.S.C. §§ 291-300 (1970), the abstract generally need only reflect transactions affecting the mineral estate. A certificate of title is acceptable in lieu of an abstract in either situation

Kerr-McGee Nuclear Corp. et al., 41 IBLA 197 (June 22, 1979)

MINING CLAIMS--Continued

TITLE--Continued

The evidence of title, required by 43 CFR 3862.1-3 to be submitted in support of a mineral patent application need reflect only documents such as deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each location. It is not necessary that the title data reflect in addition those deeds, instruments, or actions otherwise relating to the land in the mining claim.

Kerr-McGee Nuclear Corp. et al. (On Reconsideration), 43 IBLA 348 (Oct. 29, 1979)

TUNNEL SITES

Under 30 U.S.C. § 27 (1976), the Tunnel Site Act, a mining contest complaint charging that a tunnel site was not being worked with reasonable diligence is properly dismissed with respect to such charge where it sought to have such tunnel site declared null and void, but the statute provides only that the consequence of failure to work a tunnel site is the forfeiture of right to all undiscovered veins therein.

United States v. Livingston Silver, Inc., 43 IBLA 64 (Sept. 19, 1979)

WITHDRAWN LAND

A mining claim located on lands segregated or withdrawn from mineral location at the time of location is null and void ab initio.

Richard B. and Shirley A. Jarrett, 19 IBLA 78 (Feb. 27, 1975)

Mining claims are properly declared null and void ab initio where they are located on land which, on the date of location, was included in an application for withdrawal which previously had been noted on land office records.

John Boyd Parsons, 22 IBLA 328 (Nov. 10, 1975)

Merrill R. Moore, J. J. Adams, 43 IBLA 357 (Oct. 29, 1979)

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without opportunity for hearing.

Kathryn Lewis Stacy, 23 IBLA 166 (Dec. 24, 1975)

Mining claims and millsites located upon land which has been previously withdrawn from entry under the mining laws by a first-form reclamation withdrawal are void ab initio. Because Departmental Order No. 2515 delegated authority to revoke such a withdrawal to the Bureau of Reclamation with the concurrence of the Bureau of Land Management, the land remains withdrawn from mining locations when the Bureau of Land Management does not concur with the recommendation of the Bureau of Reclamation to revoke the withdrawal and restore the land to entry.

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. F. Hinds et al., 25 IBLA 67 (June 1, 1976)
83 I.D. 275

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. This withdrawal does not extend to minerals in lands near tributaries of designated rivers unless the tributaries were expressly included.

Walter B. Freeman et al., 25 IBLA 150 (June 10, 1976)

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Claims located prior to that date were not resuscitated by the Mining Claims Rights Restoration Act of 1955.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

Mining claims located on land withdrawn from all forms of entry are null and void from the beginning.

Robert L. Beery et al., 25 IBLA 287 (June 28, 1976)
83 I.D. 249

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

The rejection of an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), to open lands in a reclamation withdrawal to mineral location will be affirmed when the applicant fails to submit facts to show the basis for his knowledge or belief that the lands contain valuable mineral deposits. Merely to state the lands contain such deposits is not sufficient.

Joe Ashburn, 27 IBLA 227 (Oct. 12, 1976)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio. The finding that appellants have no rights under Sept. 1974 locations does not affect any rights which may have been deeded to them by the holder of a 1952 claim located prior to the time the land was withdrawn from mineral locations.

W. R. and G. R. Strickler, 27 IBLA 267 (Oct. 26, 1976)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

W. A. Todd, A. E. Johnson, 28 IBLA 180 (Dec. 1, 1976)

Sally Lester et al., 31 IBLA 43 (June 21, 1977)

J. E. Nesmith, 38 IBLA 357 (Dec. 22, 1978)

Mining claims located when the land has been withdrawn from all public entry by a first-form reclamation withdrawal are properly declared null and void ab initio. Subsequent restoration of the land to mineral entry does not revive the invalid locations.

Mining claims are properly declared null and void ab initio when the locations were not perfected by performance of the condition precedent to the opening of withdrawn land to location, entry and patent under the mining laws.

Floyd W. McCarty, 28 IBLA 246 (Dec. 20, 1976)

Where land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

United States v. Richard B. Walls, 30 IBLA 333 (June 7, 1977)

A mining claim which at the time of its location is situated on withdrawn land confers no rights on the locator and is void ab initio.

Rod Knight, 30 IBLA 224 (May 26, 1977)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

Charles E. Nielsen, Pauline Nielsen, 30 IBLA 235 (May 26, 1977)

A mining claim located for a nonmetalliferous mineral on land at a time when such land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

David Budinski et al., 31 IBLA 139 (June 30, 1977)

Mining claims located upon land which has been previously withdrawn from all forms of entry are null and void ab initio, creating no rights in the locator.

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal,

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

the claim may not be declared null and void ab initio without notice and an opportunity for hearing.

Cajon Minerals, Inc., 31 IBLA 188 (July 5, 1977)

A mining claim located on withdrawn land confers no right on the locator and is null and void ab initio. However, when BLM has so held claims to be null and void and it appears that the claims may not be invalid due to status factors, the case will be remanded for further consideration.

Douglas L. Russell et al., 31 IBLA 237 (July 12, 1977)

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Land reserved for a reservoir site by executive order under authority of the Pickett Act of June 25, 1910, to conserve water for irrigation purposes, remained open to the location of mining claims for metalliferous minerals, and the provisions of the Federal Power Act of June 10, 1920, would not operate to bar the location of such claims unless and until a powersite classification was subsequently imposed.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

A mining claim located before Aug. 11, 1955, on land within an existing highway material site withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

Mining claims located on land previously withdrawn from entry under the mining laws are properly declared null and void ab initio.

W. B. C. Croley, 32 IBLA 5 (Aug. 24, 1977)

Mining claims and millsites located upon land which has been previously withdrawn from entry under the mining laws by a first-form withdrawal are null and void ab initio.

Everett E. Willmarth et al., 32 IBLA 145 (Sept. 12, 1977)

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as by the creation of the North Cascades National Park on Oct. 2, 1968, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Robert A. Bukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio. Where the official records of the Department reflect such proposed withdrawal, a hearing is not required to establish the invalidity of the claim.

Mark W. Evans and John L. Cutro, 33 IBLA 32 (Nov. 25, 1977)

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as the Organ Pipe Cactus National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Lewis L. Wetherlin, Gabriele Wetherlin, 33 IBLA 86 (Dec. 8, 1977)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

The purpose of an amended location is to cure imperfections and correct errors, which in the absence of intervening rights relates back to the date of original location. An amended location made while land is withdrawn from mineral entry is ineffectual.

Ray L. Virgin, 33 IBLA 354 (Jan. 18, 1978)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a State's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Janelle R. Lester, Gary B. Deeter, Verna E. Lyons, Harry D. Lyons, 34 IBLA 81 (Feb. 22, 1978)

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

A mining claim located on land in Alaska at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

Sally Lester et al. (On Reconsideration), 35 IBLA 61 (May 10, 1978)

A mining claim or millsite located on land at a time when the land is withdrawn from mineral location is properly declared null and void.

Floyd G. Brown, 35 IBLA 110 (May 15, 1978)

A mining claim, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing.

Edward L. Macauley, Martha D. Macauley, 35 IBLA 202 (May 24, 1978)

Federal-American Partners, 37 IBLA 330 (Oct. 26, 1978)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, *as amended*, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

Mining claims located on land withdrawn from such entry are null and void ab initio and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry.

James Messano, 35 IBLA 383 (June 23, 1978)

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. Land within one-quarter mile of the bank of the Illinois River, Oregon, a river designated in sec. 5(a) of the Act as a potential addition to the system, is withdrawn from mineral entry and therefore, not available for mining claims.

Mining claims located on lands within a withdrawal which were not open to mineral entry are properly declared null and void ab initio.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio.

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

A mining claim is properly declared null and void ab initio where the land on which it is located was segregated by a formal forest exchange application, which withdrew the selected public lands from location under the mining laws prior to the time that the mineral location was made.

Charles A. Morriss, 36 IBLA 372 (Aug. 31, 1978)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Victor A. G. Schmidt, 36 IBLA 394 (Sept. 5, 1978)

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Upton and William C. Wells, 38 IBLA 90 (Nov. 15, 1978)

Mining claims on land subsequently withdrawn from mineral entry are not subject to relocation, despite failure of the original locators to do assessment work, because relocation by another party is of necessity adverse to the prior location.

Edward T. Dwyer, 38 IBLA 144 (Nov. 30, 1978)

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio in the absence of a showing that the claimants had a valid existing right to the claims which predates the withdrawal. Where claimants assert that they have simply filed amended notices of location of claims which were first located prior to the withdrawal, but the record indicates that the claims are in fact not the same as those located prior to the withdrawal, there is no valid existing right to the new claims, and they are properly declared null and void ab initio.

Piter Ekker, Kerry Ekker, 38 IBLA 277 (Dec. 13, 1978)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception and confers no rights on the locator.

W. R. and Margaret W. Collier, 39 IBLA 81 (Jan. 24, 1979)

A mining claim located on land which has been previously withdrawn from location under the mining laws may be properly declared null and void ab initio without a hearing. Such a claim confers no rights on the locator or a subsequent grantee and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry. It is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

Wendell L. Garrett d.b.a. Garrett Industries, 39 IBLA 85 (Jan. 24, 1979)

Designation of a river for potential addition to the national wild and scenic rivers system, pursuant to the Wild and Scenic Rivers Act of 1968, *as amended*, 16 U.S.C. § 1271 *et seq.* (1976), withdraws Federal lands constituting the bed or bank or within one-quarter mile of the bank of such river from all forms of appropriation under the mining laws, and on appeal the mining claimant bears the burden of showing by survey or other evidence that his claim is outside the withdrawn area.

Portions of mining claims located on lands within a withdrawal and not open to mineral entry are properly declared null and void ab initio.

Barry C. Binning, 39 IBLA 390 (Feb. 28, 1979)

Lands segregated on the public records by a proposed withdrawal posted Apr. 6, 1973, or a Recreational and Public Purposes Classification filed Nov. 13, 1956, were not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Delmer McLean et al., 40 IBLA 34 (Mar. 15, 1979)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Gerald Byron Bannon, 40 IBLA 162 (Mar. 30, 1979)

Tilden Holloway, Roland Wright, 43 IBLA 134 (Sept. 28, 1979)

Two mining claims, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing. Such a result obtains despite reference to a location notice prior to the withdrawal where appellants do not make a showing of sufficient specific facts upon which to predicate a hearing, including which of the claims the previous location relates to, the boundaries thereof, whether the previous location was for a locatable mineral under a withdrawal order then in force, and the name of the previous locator.

The Heirs of F. E. Harris, 42 IBLA 44 (July 31, 1979)

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined as of the date of the withdrawal and through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

It was proper to deny mining claimants' request to re-drill on mining claims after the land was withdrawn from mining where the work would be an effort to make a discovery of a valuable mineral deposit within the claim rather than simply a confirmation or corroboration of a discovery prior to the withdrawal.

United States v. William Lavon Chappell et al., 42 IBLA 74 (Aug. 13, 1979)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a State's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Joe C. Cereseo, 43 IBLA 136 (Sept. 28, 1979)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location. To the extent, however, that an amended location merely furthers rights acquired by a valid subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights will not prevent the amended location from relating back to the original location.

Since an amended notice merges with the original notice, the filing of the amended notice, for purposes of recordation under either sec. 8 of the Mining in the Parks Act, 90 Stat. 1342, 1343, 16 U.S.C. § 1907 (1976), or sec. 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 2769, 43 U.S.C. § 1744 (1976), together with such other information required by the applicable regulations, constitutes compliance with the recording requirements of those Acts.

Except for claims held under 30 U.S.C. § 38 (1976), a failure to record a mining claim as required by State law, coupled with a withdrawal of the land prior to any curative action, invalidates the claim, and thus precludes subsequent amendment of the claim.

An oral transfer of a mining claim, though contrary to the statute of frauds, will not serve to invalidate the claim, and a person subsequently seeking to record the claim will be afforded the opportunity to prove that the transfer actually occurred.

Where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. Gail Tibbetts et al., 43 IBLA 210 (Oct. 5, 1979)
86 I.D. 538

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

United States v. Elbert Gassaway, 43 IBLA 382 (Oct. 31, 1979)

Where mining claims were originally located on land which was withdrawn from mineral location, the claims will be declared null and void ab initio.

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Where there are factual questions relating to whether refilings subsequent to a withdrawal were in the nature of an "amended locations" or whether they constituted "relocations," the matter must be referred for a hearing to allow the claimant the opportunity to show that subsequent filings have been amended locations, and

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

that it is thus the successor in an unbroken chain of title dating back to the original location.

American Resources, Ltd., 44 IBLA 220 (Dec. 11, 1979)

"Relocation." A relocation of a mining claim is best defined as a location adverse to the prior locations.

"Amended Location." An amended location of a mining claim is best defined as one in furtherance of an earlier, valid location, and a subsequent location referring to the same parcel of land, filed by the same party, changing only the name of the claim, will be deemed an amended location.

An "amended location" generally relates back, where no adverse rights have intervened, to the date of the original location, but where there has been a withdrawal, a subsequent location relates back only to the extent that such a location merely furthers rights acquired by a valid subsisting location and does not embrace additional or new land.

When on appeal from a Bureau of Land Management decision, information is submitted upon which it is alleged that a location relates back to a prewithdrawal location, which information has not been evaluated by BLM, the decision may be set aside and the case remanded.

James C. Haight, 44 IBLA 240 (Dec. 11, 1979)

MINING CLAIMS RIGHTS RESTORATION ACT

Where at a hearing held pursuant to sec. 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a group of mining claims on land within a powersite classification, where unrestricted placer mining on such land would most probably result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Boyd McGinn et al., 25 IBLA 188 (June 14, 1976)

Placer mining on claims located pursuant to the Mining Claims Rights Restoration Act will be prohibited where unrestricted mining activity would substantially interfere with other uses of the land.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

A verified statement required under sec. 5 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 613 (1970), is properly rejected when the mining claim in connection with which it is filed, is declared to be null and void ab initio because it was located on land withdrawn from mineral location for power purposes prior to the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 *et seq.* (1970), and the land was segregated for purposes other than power development at that time and continuously thereafter.

Roy B. Cummins, 26 IBLA 223 (Aug. 17, 1976)

The Department of the Interior may contest the validity of any unpatented mining claims located on public land, including claims located within powersite withdrawals; the Department's authority to contest the validity of mining claims was not diminished by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Douglas, 26 IBLA 249 (Aug. 18, 1976)

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void at initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

Lands which are covered by a license for a power project issued by the Federal Power Commission are not open to mineral location.

Raymond C. Gardner et al., 34 IBLA 179 (Mar. 14, 1978)

The preservation of important and critical habitats for wildlife is a use warranting the prohibition of mining from an area in accordance with the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1970); however, where the only use shown on eight mining claims is likely destruction of a dove nesting and breeding habitat which has produced only approximately .11 of 1 percent of the 1976 total hunters' kill of over 2-1/2 million doves in the State of Arizona and there is insufficient evidence to establish that the habitat is a critical and important habitat for the doves, an administrative law judge's decision to allow placer mining operations will be affirmed.

United States v. Mineral Economics Corp., 34 IBLA 258 (Mar. 30, 1978)

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Upton and William C. Wells, 38 IBLA 90 (Nov. 15, 1978)

Where a mining claim has been located pursuant to the Mining Claims Rights Restoration Act, 30 U.S.C. §§ 621-625 (1970), on land withdrawn for powersite, it is proper to prohibit placer mining if there is a likelihood of substantial interference with the use of the land for fishing, hunting, recreation, and the recovery of archaeological values.

The Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a (1970), does not require the granting of permission for placer mining operations on land within a powersite withdrawal where such operations would probably interfere with other uses of the land.

United States v. Edward J. Connolly, Jr., Idaho Fish and Game Department (Intervenor), 40 IBLA 30 (Mar. 15, 1979)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

United States v. Elbert Gassaway, 43 IBLA 382 (Oct. 31, 1979)

MINING OCCUPANCY ACT

GENERALLY

An application for relief under the Mining Claims Occupancy Act, 30 U.S.C. § 701 *et seq.* (1970), which is filed more than 3 years after the filing deadline of June 30, 1971, is fatally defective and cannot be considered under the Act.

John Paul Hinds, Ruth M. Hinds, 18 IBLA 385 (Jan. 31, 1975)

The determination of the extent of the relief that will be granted to a qualified applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, is committed to the discretion of the Secretary of the Interior, and where the determination to award an applicant a lifetime lease instead of a fee interest rests upon a rational basis, it will not be disturbed.

Edward W. Kirk, Beatrice Anne Kirk, Ralph Hevener, Ramona P. Hevener, 20 IBLA 156 (May 5, 1975)

The Mining Claims Occupancy Act was intended to provide relief for persons who used their mining claims as "a principal place of residence" and for whom a hardship would be visited if they were required to move from their long-established homes on invalid mining claims.

An applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, has the burden of satisfactorily showing that she and any predecessors in interest occupied valuable improvements on a mining claim as a principal place of residence for the 7-year period immediately preceding July 23, 1962. A mere conclusive statement that she has so used the tract is not sufficient. Where specific factual assertions demonstrate only intermittent use, an application is properly rejected.

Catherine B. Blythe, 21 IBLA 217 (July 31, 1975)

MINING OCCUPANCY ACT--Continued

GENERALLY--Continued

A mining claim void ab initio may be a proper basis for a conveyance under the Mining Claims Occupancy Act, but pursuant to 30 U.S.C. § 706 (1970) trespass damages should ordinarily be assessed.

Feliciano Y. Jimenez, Margarita R. Jimenez, 30 IBLA 82 (Apr. 27, 1977)

Occupancy of a cabin which is not physically located within the boundaries of a relinquished mining claim cannot serve as a basis for the conveyance of land under the Act of Oct. 23, 1962.

Vera Rossman, 36 IBLA 93 (July 12, 1978)

ACREAGE TO BE CONVEYED

Where an offer of land under the Mining Claims Occupancy Act may include land within a right-of-way being condemned for a State highway, and where such evidence was not before the Board when it considered the appeal, a petition for reconsideration may be granted.

Robert P. Starritt (On Reconsideration), 26 IBLA 205 (Aug. 16, 1976)

CONVEYANCES

Under 30 U.S.C. § 703 (1970), where land applied for under the Mining Claims Occupancy Act is withdrawn in aid of a Governmental unit other than the Department of the Interior, the Secretary may convey an interest in the land only with the consent of the head of the Governmental unit concerned.

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

PRINCIPAL PLACE OF RESIDENCE

The Mining Claims Occupancy Act, 30 U.S.C. § 701 et seq. (1970), only requires that valuable improvements on an unpatented mining claim constitute a principal place of residence for a qualified applicant, not that such be the principal place of residence of the applicant.

Under the Mining Claims Occupancy Act, 30 U.S.C. § 701 et seq. (1970), where the record includes a statement as to a principal place of residence which conflicts with a more detailed statement made under oath by the same person, the matter may be remanded for hearing in order to resolve the conflict and protect the rights of a third party.

For purposes of the Mining Claims Occupancy Act, 30 U.S.C. § 701 et seq. (1970), under certain circumstances a principal place of residence of minor children and wife may be considered a principal place of residence of the father-husband.

Under the Mining Claims Occupancy Act, 30 U.S.C. § 701 et seq. (1970), where a couple owns no other residence, a principal place of residence held by a disabled husband, for reasons of health, may be considered a principal place of residence of his wife, even though she is customarily away from the mining claim during the week in order to work elsewhere.

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

MINING OCCUPANCY ACT--Continued

PRINCIPAL PLACE OF RESIDENCE--Continued

An applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, has the burden of satisfactorily showing that she and any predecessors in interest occupied valuable improvements on a mining claim as a principal place of residence for the 7-year period immediately preceding July 23, 1962. A mere conclusive statement that she has so used the tract is not sufficient. Where specific factual assertions demonstrate only intermittent use, an application is properly rejected.

Catherine B. Blythe, 21 IBLA 217 (July 31, 1975)

A cabin which is used for only a short period of time each year, primarily during the summer months, does not constitute "a principal place of residence" within the meaning of sec. 2 of the Act of Oct. 23, 1962, and an application for the conveyance of land based upon such use is properly rejected.

Vera Rossman, 36 IBLA 93 (July 12, 1978)

QUALIFIED APPLICANT

In order for an applicant to qualify for a conveyance under the Mining Claims Occupancy Act, 30 U.S.C. § 701 et seq. (1970), he must show that as of Oct. 23, 1962, he was a residential occupant-owner of valuable improvements in an unpatented mining claim which constituted a principal place of residence for him and his predecessors in interest for not less than 7 years prior to July 23, 1962.

Under California law, when a mining claim is purchased by a husband using community property funds, even though title is taken in the husband's name alone, a gift to the husband will not be presumed in lieu of other evidence and the wife may be considered a qualified applicant for purposes of the Mining Claims Occupancy Act, 30 U.S.C. § 701 et seq. (1970).

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

One alleging that he is a "qualified applicant" under the Mining Claims Occupancy Act, as amended, 30 U.S.C. § 701 et seq. (1970), must file a timely application in his own name to be eligible for the relief provided by the Act. Where a son who may have been qualified under the Act does not file timely, but an application is filed by his mother who is record title owner in her own name, that application cannot be considered to have been made on behalf of the son, even though he may be the equitable owner of the claim on the basis of being the beneficiary of an oral trust in the claim created by his mother and (now deceased) father at the time they purchased the claim.

An application filed under the Mining Claims Occupancy Act, as amended, 30 U.S.C. § 701 et seq. (1970), is properly rejected on the basis that the applicant is not qualified for relief under the Act where the record shows that the applicant did not live on the claim or use it as a principal place of residence during the qualifying period of time set forth in the Act.

Jessie A. Brown, 23 IBLA 23 (Dec. 1, 1975)

MINING OCCUPANCY ACT--Continued

QUALIFIED APPLICANT--Continued

The fact that an applicant for relief under the Mining Claims Occupancy Act, *as amended*, 30 U.S.C. § 701 *et seq.* (1970), subsequent to filing the application, claims to be the trustee of an oral trust in a mining claim held for the benefit of her son, who occupied the claim, does not affect the statutory requirement that in order for an applicant to qualify under the Act he or she must be a residential occupant-owner. The applicant did not occupy the claim and her son did not file an application. Therefore, her application was properly rejected.

Jessie A. Brown (On Reconsideration), 28 IBLA 339 (Jan. 17, 1977)

MISTAKES

GENERALLY

Even if it be established that a controlling regulation had been violated in previous cases, such violation does not afford a valid predicate for further violations of the regulation.

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

Even if it be established that the Department had not applied in other cases regulation 43 CFR 4115.2-1(e)(8), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

A past incorrect application of the law in adjudication of oil and gas lease offers is no authorization for failure to follow regulations in the case of an offer currently under adjudication.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

BLM personnel may not attempt to "correct," complete, or interpret entries on oil and gas lease offer application forms in such a way as to perfect an otherwise unacceptable application, nor may an applicant "cure" a defect on his drawing entry card by the submission of supplemental information after the drawing.

Resources Exploration & Mining, Inc. (On Reconsideration), 43 IBLA 89 (Sept. 19, 1979)

MULTIPLE MINERAL DEVELOPMENT ACT

GENERALLY

Mining claims located in 1933 under the general mining laws, 30 U.S.C. § 21 *et seq.* (1970), on lands known to be valuable for minerals subject to leasing under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 *et seq.* (1970), are null and void ab initio because in 1933 such lands were not open to location and disposition under the mining laws; however, since the passage of the Act of Aug. 12, 1953, 30 U.S.C. § 501 (1970), and the Multiple Mineral Development Act of Aug. 13, 1954, 30 U.S.C. § 521 *et seq.* (1970), it is possible to locate a mining claim on lands covered by a mineral permit or lease, or application therefor, or which are known to be valuable for leasable minerals, but the leasable minerals are reserved to the United States.

United States v. Long Beach Salt Co., 23 IBLA 41 (Dec. 2, 1975)

The Multiple Mineral Development Act did not amend the Mineral Leasing Act to authorize the issuance of prospecting permits for coal which cover lands subject to mining claims.

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits for Coal and Phosphate, M-36893 (Aug. 2, 1977) 84 I.D. 442

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978) 85 I.D. 171

Lands which were subject to an oil and gas lease offer on Sept. 20, 1951, were not open to mineral location, and mining claims located on such lands on this date are properly declared null and void in the absence of compliance with the redemption provisions of the Act of Aug. 12, 1953, and the Multiple Mineral Development Act, requiring filing of an amended notice of location prior to Dec. 10, 1953, in the place and manner in which the original notice was of record.

A mining claimant's failure to comply with the redemption provision of the Act of Aug. 12, 1953, and the Multiple Mineral Development Act is not excused because BLM failed to notify her of the availability of this provision.

Dorothy Smith, 39 IBLA 306 (Feb. 23, 1979)

An application for permit to drill for oil and gas in a designated Potash Area is properly denied where the applicant fails to show that his application comes within either of the two exceptions to the policy in favor of potash development enunciated in an Order of the Secretary, dated Oct. 7, 1975, 40 FR 51486.

Belco Petroleum Corp., 42 IBLA 150 (Aug. 16, 1979)

Prior to passage of the Multiple Mineral Development Act, 30 U.S.C. §§ 521-31 (1976), a prima facie valid mineral lease, or application therefor, though void and ineffectual to vest any rights to minerals subject to the mining laws in the lessee segregated the land from the operation of the mining laws and prevented the initiation of rights under the mining laws

MULTIPLE MINERAL DEVELOPMENT ACT--Continued

GENERALLY--Continued

by another person until it had been set aside and removed from the records of the land office.

Charles House, Mrs. Leonard Skinner, 42 IBLA 364 (Sept. 11, 1979)

A prospecting permit which embraces land which is not "unclaimed" and "undeveloped" is a nullity and void as a conveyance of any interest in that land. Land in a mining claim remains "unclaimed" land for the purposes of M-36893 so long as the claim is not validated by discovery of a valuable locatable mineral deposit at the date of permit issuance. Surface disturbing mineral activities, associated with delineation of a mineral ore body which could reasonably be expected to disclose knowledge of an area's coal potential constitute development. The bona fide purchaser provisions of sec. 27(h)(2) of the Mineral Leasing Act do not apply to permits which embrace land that is claimed or developed.

Effect and Implementation of Solicitor's Opinion M-36893 on "Unclaimed, Undeveloped," M-36893 (Supp.) (Nov. 19, 1979) 86 I.D. 627

MULTIPLE USE

Prior to passage of the Multiple Mineral Development Act, 30 U.S.C. §§ 521-31 (1976), a prima facie valid mineral lease, or application therefor, though void and ineffectual to vest any rights to minerals subject to the mining laws in the lessee segregated the land from the operation of the mining laws and prevented the initiation of rights under the mining laws by another person until it had been set aside and removed from the records of the land office.

Charles House, Mrs. Leonard Skinner, 42 IBLA 364 (Sept. 11, 1979)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

GENERALLY

On appeals from decisions to proceed with proposed timber sales, when the district manager tentatively proposes to withdraw the tracts from sale plans in order more fully to examine appellants' allegations, and material submitted in a related appeal, the decisions will be set aside and the cases remanded for further consideration.

Alan Winter, Elizabeth Freeman, et al., 23 IBLA 343 (Jan. 21, 1976)

A decision suspending oil and gas lease applications for public land in a national forest because the Forest Service has not prepared an environmental impact statement on a roadless area will be set aside and the cases remanded for the Bureau of Land Management in the exercise of its delegated discretion to lease public lands for oil and gas, first to determine whether the Bureau should prepare an environmental impact statement as the lead agency responsible for mineral leasing, and then to act on the offers accordingly.

Chevron Oil Co., 24 IBLA 159 (Mar. 15, 1976)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

GENERALLY--Continued

The Board of Land Appeals may entertain and, where appropriate, grant a motion by the Bureau of Land Management to remand a case to it for further consideration on the question of whether an environmental impact statement must be filed, even though an appellant, who has protested against a negative declaration that no impact statement is required, objects to the remand.

Harold Gillis, 24 IBLA 248 (Mar. 25, 1976)

An application for a communication site under 43 U.S.C. § 961 (1970) should be denied where utilization of an existing right-of-way is practical under 43 U.S.C. § 1763 (19__) and where the proposed site would have an adverse impact on the environment.

"Practical." Under 43 U.S.C. § 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

It is not necessary for the Government to prepare an environmental impact statement before issuing a complaint in a mining claim contest, as the determination of the validity of a mining claim is not a "major Federal action" within the ambit of sec. 102 of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (1970).

United States v. Ernest E. Siven and Richard J. I. Anderson, 32 IBLA 361 (Oct. 25, 1977)

The Bureau of Land Management may require the execution of special stipulations, including a no-surface-occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation along a proposed wild and scenic river corridor, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Cuesta Petroleum Co., 33 IBLA 116 (Dec. 16, 1977)

Dean W. Rowell, 37 IBLA 387 (Nov. 6, 1978)

The Bureau of Land Management may require the execution of special stipulations, including a no-surface occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation in a scenic area, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Robert L. Healy, 35 IBLA 66 (May 12, 1978)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

GENERALLY--Continued

A stipulation prohibiting drilling and storage of oil on a portion of an oil and gas lease of 160 acres in order to protect an area of a river which is in a study section of the Wild and Scenic Rivers Act is reasonable, without consideration of other factors, where it leaves three-quarters of the lease open to regular activity.

Duncan Miller, 35 IBLA 108 (May 15, 1978)

The Secretary of the Interior is obligated to support and implement the national policy expressed by Congress in the National Environmental Policy Act of 1969.

Southern California Motorcycle Club, Inc., Sierra Club, 42 IBLA 164 (Aug. 17, 1979)

BLM is obligated in preparing Environmental Analysis Records (EAR's) preliminary to a determination as to whether a full environmental impact statement for a proposed Federal action will be prepared pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (1976), to develop a reviewable record reflecting a consideration of all relevant factors. In the case of a proposed Federal timber sale the purely speculative threat of erosion or threat to the watershed caused by the absence of forest regeneration or a proposed trails system where the sale area is deemed to be of negligible recreational value are properly considered in a decision denying a protest of the sale.

Elaine Mikels et al., 44 IBLA 51 (Nov. 19, 1979)

ENVIRONMENTAL STATEMENTS

Where by final judgment a court has determined that an environmental impact statement must be filed under 42 U.S.C. § 4332 (1970) according to a particular schedule for the grazing lease program in a particular area, such an approved schedule will be followed by the Department.

Sidney Brooks et al., 22 IBLA 177 (Sept. 30, 1975)

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

Paula J. Jones, 24 IBLA 76 (Feb. 24, 1976)

In exercising the Secretary of the Interior's discretionary authority to lease known sodium deposits under the Mineral Leasing Act, an application to have the lands leased is properly rejected where it appears that the land applied for and surrounding environment near a national recreation area may be more severely damaged than most other sites within the known sodium leasing area, there is local governmental and other opposition to the leasing, and Bureau of Land Management and Forest Service officials recommend preparation of an Environmental Impact Statement for the entire known sodium area before leasing further lands in the area.

Eugene V. Simons, 26 IBLA 208 (Aug. 16, 1976)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

Where by final judgment a court has ordered that until an appropriate environmental impact statement is issued the BLM will issue authorization for livestock grazing only on an annual basis, a grazing permit can be renewed for only 1 year, even though the grazing unit has been pledged as security for a bona fide loan.

Hat Ranch, Inc., 27 IBLA 340 (Nov. 4, 1976) 83 I.D. 542

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Citizens' Committee to Save Our Public Lands, 29 IBLA 48 (Feb. 16, 1977)

Where the Bureau of Land Management denies a request for the filing of an Environmental Impact Statement for a single planned timber sale but is in the process of preparing a detailed Environmental Impact Statement for the sustained yield unit which includes the parcel in question, the probability that the district-wide statement will adequately meet the requirements of NEPA with respect to the sale tract in issue justifies a denial of a request for a statement directed specifically to the smaller included sale.

Harold P. Cassidy et al., 29 IBLA 69 (Feb. 23, 1977)

When parties are to offer evidence as to costs, to a mining claimant, of measures required by statute or regulation to mitigate environmental impact from development of a mine, it would be helpful for a Government contestant to assist an intervening State government and the claimant in computation of such costs; however, under 42 U.S.C. § 4332 (1970), an environmental impact statement is not required prior to the nondiscretionary Federal action of issuance of a mineral patent.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

Where by final judgment a court has ordered that until an appropriate environmental impact statement is issued, the Bureau of Land Management will issue authorization for livestock grazing only on an annual basis, a grazing lease can be renewed only on an annual basis, even though the grazing unit has been pledged as security for a bona fide loan.

Ralph H. and Jacqueline L. Rainwater, 31 IBLA 377 (Aug. 8, 1977)

Where one objects to the Bureau of Land Management's decision to offer a certain tract of timber for sale on the grounds that an environmental impact statement for the single planned timber sale has not been prepared and that such a sale would violate the sustained yield provisions of the O&C Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1970), the Bureau decision will be upheld when the objecting party fails to provide any evidence to support its contentions and a program environmental impact statement for the sustained yield unit

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

which includes the parcel in question is in the process of being prepared.

Headwaters, 33 IBLA 91 (Dec. 16, 1977)

Where a proposed Federal timber sale would allow the cutting of trees on a 162-acre tract pursuant to a properly promulgated decision of the Director of the Bureau of Land Management concerning the allowable cut in that district, such sale does not, by itself, constitute a major Federal action significantly affecting the quality of the human environment such as will require the preparation of an environmental impact statement prior to the sale.

George Jalbert et al., 39 IBLA 205 (Feb. 2, 1979)

To secure the exemption under sec. 404(r) of the Federal Water Pollution Control Act for projects described in an environmental statement, compliance with seven specific conditions is required. The exemption does not apply to the maintenance of existing Federal projects, but only to new construction. While the exemption provides an alternative procedure to achieve compliance with sec. 404 of the Act for a limited category of Federal projects under very specific conditions, it does not lessen the substantive requirements that apply to the discharge of dredged or fill material.

Permit Requirements for Discharge of Dredged or Fill Material Under Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. § 1344, M-36915 (Aug. 27, 1979) 86 I.D. 400

NATIONAL HISTORIC PRESERVATION ACT

GENERALLY

Sec. 106 of the National Historic Preservation Act requires an agency granting a right-of-way over Federal lands for a pipeline or other linear project to (1) identify potentially affected cultural resources; (2) consult regarding such effect with the Advisory Council on Historic Preservation; and (3) to consider these cultural resources in making or denying the grant. A rule of reason applies as to the scope of the lands to be inventoried, and the degree of effort required.

The Extent to Which the National Historic Preservation Act Requires Cultural Resources to be Identified and Considered in the Grant of a Federal Right-of-Way, M-36917 (Dec. 6, 1979) 87 I.D. 27 (1980)

APPLICABILITY

The grant of a right-of-way over Federal land for a pipeline or other linear project is a Federal undertaking which requires the authorizing agency to comply with sec. 106 of the National Historic Preservation Act, as implemented by 36 CFR Part 800.

Sec. 106 of the National Historic Preservation Act requires an agency granting a right-of-way over Federal lands for a pipeline or other linear project to identify and consider cultural resources on non-Federal lands affected by construction activities on Federal lands.

Sec. 106 of the National Historic Preservation Act requires an agency granting a right-of-way over Federal lands for a pipeline or other linear project to identify and consider cultural resources on non-Federal lands which may foreseeably be affected by the grant of the right-of-way. A rule of reason applies in determining the extent of non-Federal lands on which cultural resources are to be identified, and the degree of effort required. 36 CFR 800.4(a).

In the grant of a right-of-way over Federal lands for a pipeline or other linear project, the scope of lands to which the requirements of sec. 106 of the National Historic Preservation Act apply may be analogous to the scope of lands to be considered pursuant to sec. 102 of the National Environmental Policy Act.

The Extent to Which the National Historic Preservation Act Requires Cultural Resources to be Identified and Considered in the Grant of a Federal Right-of-Way, M-36917 (Dec. 6, 1979) 87 I.D. 27 (1980)

NATIONAL PARK SERVICE

GENERALLY

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the consent of the Secretary of the Interior is necessary under the Act to the leasing of the land. Where the National Park Service recommends that oil and gas leases for lands within the boundaries of the Chickasaw National Recreation Area be rejected in order to maintain the area for the purposes for which it was established, it is proper to accept this recommendation and reject the offers.

Daphine Shear, David L. Shear, 29 IBLA 33 (Feb. 10, 1977)

Since an amended notice merges with the original notice, the filing of the amended notice, for purposes of recordation under either sec. 8 of the Mining in the Parks Act, 90 Stat. 1342, 1343, 16 U.S.C. § 1907 (1976), or sec. 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 2769, 43 U.S.C. § 1744 (1976), together with such other information required by the applicable regulations, constitutes compliance with the recording requirements of those Acts.

R. Gail Tibbetts et al., 43 IBLA 210 (Oct. 5, 1979) 86 I.D. 538

NATIONAL PARK SERVICE AREAS

GENERALLY

Unless the statute creating the area specifically provides otherwise, areas within the National Park system are not open for location of mining claims.

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

The Act of Mar. 27, 1978, 92 Stat. 166, 16 U.S.C.A. § 1a-1 (West Supp. 1979), provides that actions taken in derogation of park values and purposes shall not be authorized unless specifically provided by Congress, in order to ensure that the resources and values of areas

NATIONAL PARK SERVICE AREAS--Continued

GENERALLY--Continued

in the National Park System are afforded the highest protection and care in governmental decisions.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

LAND

Mining

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Minerals which are subject to location under the general mining law on public land outside the Lake Mead Recreation Area are subject to the leasing provisions of the Act of Oct. 8, 1964, within the Recreation Area. But, minerals which are disposable by sale under the 1947 Materials Act when situated outside the Recreation Area are also subject to such disposals within it.

Silite Aggregate Co., 26 IBLA 197 (Aug. 11, 1976)

WATER RIGHTS

The particular reserved water rights for national park and national monument areas include water required for scenic, natural, and historic conservation uses; wild-life conservation uses; sustained public enjoyment uses; and National Park Service personnel uses; all of which are intimately related to the fundamental purpose for park and monument reservation, as articulated in 16 U.S.C. § 1 (1976).

Among other reserved water rights for national parks and national monuments, 16 U.S.C. § 1 (1976) encompasses reserved water rights for concession uses to provide sustained public enjoyment and reserved water rights for water-borne public enjoyment and recreation.

Congress has taken no action subsequent to the National Park Service Organic Act of Aug. 25, 1916, 39 Stat. 535, 16 U.S.C. § 1 (1976), to negate the implied intent contained in the Organic Act that all unappropriated waters necessary to fulfill the purposes of park areas are reserved as of the date of the enabling legislation.

The discretionary authority contained in the Act of Aug. 7, 1946, 60 Stat. 885, 16 U.S.C. § 17j-2(g) (1976), authorizing the National Park Service to acquire water rights in accordance with local laws, is not inconsistent with the assertion of the reserved water rights principle and is readily distinguishable from Acts requiring deference to State water law.

As a general rule, the above-developed reserved water rights apply to components of the National Park System other than national parks and national monuments, though the extent of particular reserved water rights must be determined on a case-by-case basis, involving an interpretation of 16 U.S.C. § 1 (1976) and the establishing legislation.

NATIONAL PARK SERVICE AREAS--Continued

WATER RIGHTS--Continued

The National Park Service and Fish and Wildlife Service may appropriate water to fulfill any congressionally authorized function for areas under their administration.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

NAVAL PETROLEUM RESERVES

Where an oil and gas lease offer for public lands within 1 mile of the exterior boundaries of a naval petroleum reserve is rejected because the Department of the Navy recommends against the leasing of the land despite the Geological Survey's determination that operations on the subject land would not adversely affect the naval reserve through drainage from known productive horizons, the decision rejecting the lease offer will be reversed. The recommendations of the Federal agency exercising jurisdiction over a naval petroleum reserve, while important, are not conclusive. The final determination rests with the Department, and where the Geological Survey after full consideration of pertinent technical considerations recommends leasing, a lease will issue.

R. Garvin Berry, Jr., 18 IBLA 331 (Jan. 9, 1975)

NAVIGABLE WATERS

An application for a lease of geothermal resources within a riverbed not under jurisdiction of the United States is properly rejected.

Milan S. Parolak, 19 IBLA 139 (Mar. 7, 1975)

The States possess dominion over the beds of all navigable streams within their borders.

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

Leonard B. McSweyn, 28 IBLA 100 (Nov. 15, 1976)
83 I.D. 556

The Mineral Leasing Act for Acquired Lands does not exclude from oil and gas leasing those lands underlying the Missouri River within the boundaries of the Fort Berthold Indian Reservation as established by the Treaty of Fort Laramie (1851) and the Executive Order of Apr. 12, 1870, which were reacquired by the United States from the Indian tribes. The exclusion in the Act for submerged lands refers to submerged *coastal* lands, as set forth in 43 CFR 3101.2-1(g).

Prior to the admission of North Dakota to the Union on Nov. 2, 1889, the United States could grant lands underlying the Missouri River, a navigable river, to establish the Fort Berthold Indian Reservation. After said date, it could condemn or otherwise acquire these lands for construction of the Garrison Dam and Reservoir.

The language of the Treaty of Fort Laramie and the Executive Order of Apr. 12, 1870, when considered with the case law and various utterances made contemporaneously with the Treaty, discloses an intention to include the lands underlying the Missouri River, insofar as it runs

NAVIGABLE WATERS--Continued

through the Fort Berthold reservation, among the lands of the reservation itself.

Impel Energy Corp., 42 IBLA 105 (Aug. 16, 1979)

The requirement for a permit under sec. 404 of the Federal Water Pollution Control Act applies to the Bureau of Reclamation to the same extent as any other person, and with certain exceptions the Bureau must obtain a permit from the Corps of Engineers prior to any discharge of dredged or fill material into the navigable waters.

Activities "affirmatively authorized by Congress," which are excepted from sec. 10 of the Rivers and Harbors Act of 1899, are *not* excepted from sec. 404 of the Federal Water Pollution Control Act. Notwithstanding the exception of a discharge of dredged or fill material under sec. 10 of the Rivers and Harbors Act, compliance with sec. 404 is required.

A permit under sec. 404 of the Federal Water Pollution Control Act is required for the discharge of dredged or fill material whenever: (a) the "discharge" constitutes any addition of any pollutant to navigable waters from any discernible, confined and discrete conveyance, including the placement of fill and the building of any structure or impoundment; and (b) the "dredged material" is dredged spoil that is excavated or dredged from the waters of the United States; or (c) the "fill material" includes any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body, including any structure which requires rock, sand, dirt or other material for its construction; and (d) the discharge is made into "waters of the United States," which extend beyond those waters meeting the traditional tests of navigability to those encompassed by the broadest possible constitutional interpretation.

Permit Requirements for Discharge of Dredged or Fill Material Under Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. § 1344, M-36915 (Aug. 27, 1979) 86 I.D. 400

NOTICE

GENERALLY

Sec. 6(b) of the Alaska Statehood Act does not require that patents issued to the State include a proviso that the conveyed lands are vacant, unappropriated, and unreserved, and do not affect any valid existing claim, location or entry under the laws of the United States. The Department assures compliance with this provision by excluding from selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that adequate notice be given to all other persons claiming an interest in the selected land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

When the holder of a grazing lease is found to have violated regulations and the terms of his lease because his cattle have trespassed on Federal land, his lease may be canceled when lesser sanctions have proved to be of no effect or when the nature of the violation demands such severity. However, a decision canceling a lease will be set aside where the district manager relied upon alleged trespasses of which the lessees had no notice and which occurred after a show cause notice had issued, and the case will be remanded for further proceedings.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976) 83 I.D. 269

Where it does not appear that the notice required by sec. 7(b) of the Privacy Act of 1974 regarding the disclosure of a social security number was given, an oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure should not be considered defective solely because the applicant omitted designating the social security number on the card as provided thereon.

Harry Reich, 27 IBLA 123 (Sept. 30, 1976) 83 I.D. 507

Richard Lovatt, 28 IBLA 244 (Dec. 10, 1976)

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and directors, and the attorney represents these individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

Service of a document upon a person's attorney of record constitutes effective service upon such person.

United States v. Mine Development Corp. et al., 27 IBLA 238 (Oct. 18, 1976)

Where the Bureau of Land Management sends notice to an offeror at his record address, pursuant to 43 CFR 3103.3-1, that the first year's rental accompanying his noncompetitive oil and gas lease offer is deficient and such notice is returned to the Bureau marked "Unclaimed" by the post office, the cancellation of the lease will be set aside and the notice will not be considered to have been served on the offeror, pursuant to 43 CFR 1810.2(b), when the post office has failed to forward the notice in accordance with a request by the offeror to forward all mail and other mail has, in fact, been forwarded.

Jack B. Coombs, 28 IBLA 53 (Nov. 9, 1976)

An offeror is properly disqualified from receiving a noncompetitive oil and gas lease on an offer which is drawn first from a group of simultaneously filed offers when he fails to pay the first year's advance rental within 15 days of his receipt of notice that such rental is due, and the delay is attributable to his posting of the rental check with insufficient postage.

Edgar C. Pennington, Jr., 28 IBLA 65 (Nov. 10, 1976)

A document which is sent by the Bureau of Land Management to an oil and gas lessee by certified mail is considered to be served upon the lessee when a receptionist in lessee's office signs the return receipt card, and the lessee will be charged with notice as of that date as to the contents of such document.

Lone Star Producing Co., 28 IBLA 132 (Nov. 19, 1976)

NOTICE--Continued

GENERALLY--Continued

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Universal Resources Corp., et al., 31 IBLA 61 (June 23, 1977)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

Donald H. Little, 37 IBLA 1 (Sept. 6, 1978)

Dermot S. McGlinchey, 38 IBLA 211 (Dec. 6, 1978)

Juan Munoz, 39 IBLA 72 (Jan. 24, 1979)

Charles and Pete Caress, 41 IBLA 302 (June 29, 1979)

Gary Bilske, 44 IBLA 21 (Nov. 6, 1979)

30 U.S.C. § 188(b) (1970), and its implementing regulation 43 CFR 3108.2-1, requiring a notice of deficiency on a form approved by the director apply only to rental payments due on the anniversary dates of noncompetitive oil and gas leases, and are inapplicable to deficient initial rental payments for noncompetitive oil and gas lease offers.

Where the Bureau of Land Management notifies an oil and gas lessee of a deficiency in initial rental and the deficiency is not paid to the Bureau within the time prescribed, but is paid some 5 months later, the delay being ascribed to "oversight" the lateness of the payment will not be excused and the cancellation of the lease for failure to pay the rental timely is properly sustained.

Evelyn Chambers, 33 IBLA 271 (Jan. 5, 1978)

A mining claimant required by the Federal Land Policy and Management Act of 1976 and its implementing regulations to file a notice of location with the Bureau of Land Management, may not justify a late filing by the Bureau of Land Management's failure timely to notify the claimant of the requirement.

Belton E. Hall, 33 IBLA 349 (Jan. 18, 1978)

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

Where the official records of the Bureau of Land Management show a reservoir right-of-way affecting certain land, the oil and gas therein may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.* (1970). This result follows even though the reservoir right-of-way may have been issued improperly or should have been terminated.

Republic Oil & Mining Co. and Margaret V. Coombs, 35 IBLA 212 (May 26, 1978)

Service by registered or certified mail may be proved by a post office return receipt showing that the document was delivered to the person's record address. The receipt need not be signed necessarily by the person to whom the mail was addressed.

Lillian Sweet, 37 IBLA 25 (Sept. 14, 1978)

Where BLM sends by certified mail a notice to an offeror at his record address, pursuant to 43 CFR 3103.3-1, that the first year's rental is due within 15 days of receipt of the notice, and the letter is returned to BLM marked "moved left no address" by the post office, and it is established that the nondelivery by the post office was erroneous, the rejection of the lease offer will be set aside and the notice will not be considered to have been served on the offeror pursuant to 43 CFR 1810.2(b).

Joan L. Harris and Jonathan T. Amos, 37 IBLA 96 (Sept. 28, 1978)

A mining claimant's failure to comply with the redemption provision of the Act of Aug. 12, 1953, and the Multiple Mineral Development Act is not excused because BLM failed to notify her of the availability of this provision.

Dorothy Smith, 39 IBLA 306 (Feb. 23, 1979)

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations.

Dale C. Dolor, 40 IBLA 88 (Mar. 22, 1979)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Such regulations have the force and effect of law and are binding on the Department.

Fred S. Ghelarducci, 41 IBLA 277 (June 28, 1979)

Bernard P. Cencorelli, 43 IBLA 7 (Sept. 11, 1979)

Where BLM sends by certified mail a request for payment of advance rental to the address of record of a successful offeror in a simultaneously filed oil and gas lease drawing and such request is returned by the Post Office, marked "Moved, left no address," the offeror is properly deemed to have "receipt of notice" under 43 CFR 1810.2. Where the address of record of the offeror is that of a leasing service and the leasing service moves, filing a change of address form with the Post Office in the name of the leasing service, but not in the name of appellant, the Post Office properly returned the notice addressed to the offeror to BLM.

Roy Lindgren, 43 IBLA 139 (Sept. 28, 1979)

NOTICE--Continued

GENERALLY--Continued

Where BLM sends by certified mail a request for payment of advance rental to the address of record of a successful offeror in a simultaneously filed oil and gas lease drawing and such notice is returned by the Post Office, marked "Moved, left no address," the offeror is properly deemed to have "receipt of notice" under 43 CFR 1810.2, where the offeror's address of record is that of a leasing service and the leasing service moves, filing a change of address form with the Post Office in the name of the leasing service, but not in the name of appellant.

Clyde K. Kobbeman, 43 IBLA 370 (Oct. 29, 1979)

Service of a BLM decision may be made by sending the document by registered or certified mail, return receipt requested, to an applicant's address of record in the Bureau, and it is irrelevant who there actually receives and signs for it.

Martha P. Merrill, 44 IBLA 136 (Nov. 30, 1979)

CONSTRUCTIVE NOTICE

Published notice of a proposed State selection in accordance with regulatory requirements is adequate notice to all persons claiming the lands adversely to the State.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

Richard W. Rowe, Daniel Gandiano, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and Directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

Service of a document upon a person's attorney of record constitutes effective service upon such person.

United States v. Mine Development Corp. et al., 27 IBLA 238 (Oct. 18, 1976)

COURTESY NOTICE

A mining claimant required by the Federal Land Policy and Management Act of 1976 and its implementing regulations to file a notice of location with the Bureau of Land Management, may not justify a late filing by the Bureau of Land Management's failure timely to notify the claimant of the requirement.

Belton E. Hall, 33 IBLA 349 (Jan. 18, 1978)

OATHS

Under the Mining Claims Occupancy Act, 30 U.S.C. § 701 et seq. (1970), where the record includes a statement as to a principal place of residence which conflicts with a more detailed statement made under oath by the same person, the matter may be remanded for hearing in

OATHS--Continued

order to resolve the conflict and protect the rights of a third party.

Dwight D. and Verna E. Huston, 21 IBLA 24 (June 16, 1975)

Under 43 CFR 1821.3-1, information submitted by an oil and gas offeror pursuant to a request by BLM need not be made by affidavit under oath.

Duncan Miller, 38 IBLA 154 (Dec. 5, 1978)

"Certified." Under 43 CFR 1821.3-1(a), additional information submitted by an oil and gas offeror pursuant to a request by BLM need not be in affidavit form. A request for a "certified" copy of an unrecorded document in the possession of its owner connotes the intention that the owner attach an affidavit attesting to its authenticity.

Martha P. Merrill, 44 IBLA 136 (Nov. 30, 1979)

OFFICE OF HEARINGS AND APPEALS

(See also Director--if included in this Index.)

The Board of Land Appeals, in its adjudication of appeals to determine rights of parties to receive or preserve interests in Federal lands, has a concomitant obligation to preserve the integrity of the process, and where it appears to the Board that the administrative record of a case contains strong evidence of multiple violations of 18 U.S.C. § 1001 (1976), the Board will refer the matter with its recommendation that an investigation be initiated to determine whether criminal charges should be brought.

Lee S. Bielski, 39 IBLA 211 (Feb. 8, 1979) 86 I.D. 80

A decision by the Bureau of Land Management canceling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

Blue Star, Inc., Atomic Western, Inc., Fremont Energy Corp., Ivor Adair, 41 IBLA 333 (July 11, 1979)

OIL AND GAS LEASES

GENERALLY

The Department has discretionary authority to issue or not to issue leases under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970).

General Crude Oil Co., 18 IBLA 326 (Jan. 7, 1975)

No law or regulation requires the mandatory rejection of an oil and gas lease offer merely because it is held in suspense for 1 year. The setting of a specific time limit on the suspension of an oil and gas offer is not a determination in the exercise of the Secretary's discretionary authority of whether or not to lease the lands for oil and gas.

Justheim Petroleum Co., 18 IBLA 423 (Feb. 13, 1975)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Where the Forest Service suggests a stipulation barring any occupancy and use of the surface as a condition precedent to the issuance of an oil and gas lease for public lands in a national forest, based only on the fact that the land is in an "inventoried roadless area," and where later the Forest Service agrees to a revised stipulation, the Bureau of Land Management decision to the extent it required the execution and filing of the "Roadless Area" stipulation will be set aside and the case remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

James A. Krumhansl, 19 IBLA 56 (Feb. 21, 1975)

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

Duncan Miller, 19 IBLA 86 (Mar. 3, 1975)

When noncompetitive oil and gas lease offers are rejected by the Secretary of the Interior in the exercise of his discretion, the offers will not be held in suspense pending a future determination that the lands described in the offers should be leased.

John Oakason, Beard Oil Co., 19 IBLA 191 (Mar. 18, 1975)

Where an oil and gas lease is subject to cancellation but an assignment of the lease has been filed by one claiming protection as a bona fide purchaser in accordance with the statute and regulations, action to cancel the lease will be stayed until it is determined whether the assignee is, in fact, entitled to protection of the statute and regulations afforded to bona fide purchasers.

Dale A. Spiegel, 19 IBLA 235 (Mar. 26, 1975)

Tiffany Trust, 21 IBLA 160 (July 21, 1975)

Gus Panos, 21 IBLA 163 (July 21, 1975)

A bond for not less than $1,000 is properly required to be filed when all or any part of the land in a noncompetitive lease is included within the limits of a known geologic structure of a producing oil and gas field. That the land is included in a communitized producing unit does not vitiate that requirement.

Duncan Miller, 20 IBLA 9 (Apr. 14, 1975)

The Department of the Interior has full and final authority to determine whether or not to issue oil and gas leases. Where the lands embraced within an oil and gas lease offer contain established archaeological sites and in the opinion of the responsible Departmental officials oil and gas exploration activities would destroy or impair the sites, a lease offer is properly rejected, absent an affirmative showing on behalf of the offeror that exploration activities would not infringe upon the archaeological resources of the area.

Rosita Trujillo, 20 IBLA 54 (Apr. 28, 1975)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Where the Bureau of Land Management changes an administrative practice to thereafter refuse to accept unofficial copies of the simultaneous oil and gas lease entry card, by an order dated Mar. 26, 1975, the new practice will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Feb. 1975 simultaneous filing period.

V. J. Malloy, 20 IBLA 327 (June 6, 1975)

A demand by the Geological Survey for prejudgment interest for delayed payment of additional royalties owed to the Government is not necessarily unenforceable in the courts because it was not asserted as a counterclaim under Rule 13(a) of the Federal Rules of Civil Procedure.

Atlantic Richfield Co., 21 IBLA 98 (June 30, 1975)
82 I.D. 316

Under the provisions of 43 CFR 3107.2-1(b)(2) (1973) an oil and gas lease which had been committed to a unit and extended as a result of production occurring within that unit, is not within its primary term but rather is held by production. Therefore, the diligent drilling extension provision of 43 CFR 3107.2-3 is not available as a method of further extension since that provision is limited to leases in their primary term.

Tenneco Oil Co., Sun Oil Co., 21 IBLA 130 (July 14, 1975)

Title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, and the State shall succeed to the position of the United States as lessor under such lease.

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

The execution of special stipulations as a condition precedent to the issuance of oil and gas leases for land located in national forests may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

Bill J. Maddox, 22 IBLA 97 (Sept. 22, 1975)

Where an oil and gas lease offeror files a simultaneous oil and gas lease drawing card and indicates that its corporate qualifications are filed under a specific serial number, the offer will not be rejected where the corporation can show that the State Office informed it earlier that its corporate qualifications had been placed in that file.

Allied Chemical Corp., 23 IBLA 214 (Jan. 6, 1976)

The recommendations of the Forest Service are important in determining whether or not an oil and gas lease should issue for public lands but are not conclusive. Ultimately, the Secretary of the Interior is entrusted

OIL AND GAS LEASES--Continued

GENERALLY--Continued

with the responsibility of determining whether or not to issue a lease.

Stanley M. Edwards, 24 IBLA 12 (Feb. 4, 1976)
83 I.D. 33

It is well established that the execution of appropriate special stipulations as a condition precedent to the issuance of oil and gas leases may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational, and other land use values.

While "no surface occupancy" stipulations should be of sufficient efficacy to protect the environment, no lease should issue with stipulations so restrictive that the use of the land for any purpose associated with the production of oil and gas is totally precluded.

The financial burden of complying with protective stipulations in oil and gas leases is the sole responsibility of the lessee.

Bill J. Maddox, 24 IBLA 147 (Mar. 10, 1976)

The Mineral Leasing Act of 1920 vests the Department of the Interior with the discretion to lease public lands for oil and gas, including public lands in the national forests. Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing.

Chevron Oil Co., 24 IBLA 159 (Mar. 15, 1976)

The financial burden of complying with stipulations included in an oil and gas lease is the sole responsibility of the lessee.

Duncan Miller, 24 IBLA 203 (Mar. 19, 1976)

The amount of acreage contained in an oil and gas lease may be reduced where, upon resurvey of the land, it is determined that the area under lease is actually smaller than the area shown by the original survey.

Grace M. Brown et al., 24 IBLA 301 (Apr. 1, 1976)

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Arkla Exploration Co., 25 IBLA 220 (June 21, 1976)

Frances J. Richmond, 29 IBLA 137 (Mar. 3, 1977)

Coquina Oil Corp., 29 IBLA 310 (Mar. 30, 1977)

Gerald S. Ostrowski, 34 IBLA 254 (Mar. 28, 1978)

Southern Union Exploration Co., 41 IBLA 81 (May 31, 1979)

Gerald S. Ostrowski (On Reconsideration after Remand), 44 IBLA 17 (Nov. 6, 1979)

Basil W. Reagel, 44 IBLA 62 (Nov. 20, 1979)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Where the Bureau of Land Management ordered on Mar. 26, 1975, that unofficial copies of the simultaneous oil and gas lease entry card were invalid and to be rejected, that order will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Jan. 1975 simultaneous filing period.

Eve Reese, 25 IBLA 244 (June 22, 1976)

The dismissal of a protest, which consists of a mere allegation that the successful drawee was engaged in practices militating against the fairness of the drawing, will be sustained on appeal absent any substantiating evidence supporting the allegation.

Duncan Miller, 26 IBLA 37 (July 8, 1976)

The fact that the courtesy rental notice was delayed in reaching appellant because it was sent to appellant's former address is not a justifiable excuse for late payment.

Serio Exploration Co., 26 IBLA 106 (July 26, 1976)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without a showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated basis for the imposition of the stipulation is the threat of oil and gas activities to automobile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern K. Jones et al., 26 IBLA 165 (Aug. 4, 1976)

Where an oil and gas lease offer is rejected because the land was received by the United States as part of a sec. 8, Taylor Grazing Act exchange, and the record does not indicate such an exchange took place the case will be remanded for consideration in light of the actual record.

Husky Oil Co. of Delaware, 26 IBLA 194 (Aug. 11, 1976)

An oil and gas lease will expire by operation of law at the end of its primary term unless oil or gas is being produced in paying quantities at that time or actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted, thereby entitling the lessee to an extension of the lease. A once productive well which ceases its productive capability during the initial term will not prevent expiration of the lease.

Rajac Industries, Inc., 26 IBLA 202 (Aug. 11, 1976)

Bureau of Land Management personnel have no affirmative duty to take extraordinary measures to preserve an oil and gas lease or to save the lessee from the possible consequences of his own conduct of his affairs concerning such lease.

Stanley J. Pirtle, 26 IBLA 348 (Sept. 7, 1976)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

An assessment greater than the normal royalty charge may be required for oil and gas that are wasted.

Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clause, M-36888 (Oct. 4, 1976) 84 I.D. 54 (1977)

Failure to execute fully an oil and gas drawing card (by omitting the zip code) properly results in the rejection of the offer.

Even assuming that a BLM order has the force and effect of a regulation, it cannot be applied retroactively where there are intervening rights or the interests of the United States would be adversely affected. Where there is a No. 2 oil and gas drawing card, it constitutes an intervening right.

Beverly J. Steinbeck, 27 IBLA 249 (Oct. 18, 1976)

Sec. 4 of the Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands within a known geothermal resource area under regulations formulated by the Secretary of the Interior. Where the Department has promulgated regulations pursuant to this section which provides the Secretary's authorized officer with the reserved right to reject any and all bids submitted for a competitive geothermal lease sale, and that reserved right is publicized in the sale notice, the Government is not obligated to accept any bid which might be considered inadequate.

Getty Oil Co., 27 IBLA 269 (Oct. 26, 1976)

Failure to execute fully an oil and gas drawing entry card (by omitting the zip code) properly results in the rejection of the offer.

Amy H. Hanthorn, 27 IBLA 369 (Nov. 4, 1976)

An oil and gas lease issued effective Oct. 1, 1966, for a term of 10 years expired at midnight on Sept. 30, 1976, unless extended by some provision of statute or regulation.

Duncan Miller, 28 IBLA 62 (Nov. 10, 1976)

A document which is sent by the Bureau of Land Management to an oil and gas lessee by certified mail is considered to be served upon the lessee when a receptionist in lessee's office signs the return receipt card, and the lessee will be charged with notice as of that date as to the contents of such document.

Lone Star Producing Co., 28 IBLA 132 (Nov. 19, 1976)

Where the State Office, following a recommendation of the National Park Service rejects an application for an oil and gas lease in the Lake Mead National Recreation Area on the basis of a general environmental review of the consequences of oil and gas leasing in the Recreation Area, but which does not specifically show that the lands involved are of a particular value in the Recreation Area as a whole and that leasing subject to stipulations will not suffice to protect the recreation and other values of the land, the case will be remanded for

OIL AND GAS LEASES--Continued

GENERALLY--Continued

a particular application of the environmental review to that land.

Robert B. Wahl, Howard Lee, 28 IBLA 305 (Jan. 13, 1977)

Whereas 30 CFR 221.48 and 221.50 clearly indicate the lessee must pay royalty on all production, the lessee is obligated to pay full value on all gas wasted (221.35), and the supervisor has no discretion to collect less than the full value of gas wasted.

Computation of Moneys Due the United States on Oil and Gas Lost as a Result of Pennzoil's Blowout, M-36888 (Supp.) (Jan. 19, 1977) 84 I.D. 64

Where a regulation is amended in a way that benefits an oil and gas lessee, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases.

Howard S. Bugbee, 29 IBLA 30 (Feb. 8, 1977)

An appeal to the Board of an automatic termination of an oil and gas lease will be dismissed as not ripe where appellant sends the appeal to the Board before a Notice of Termination of Lease has been issued and a Petition for Reinstatement rejected by the State Office, Bureau of Land Management.

Read & Stevens, Inc.; Franklin, Aston & Fair, Ltd.; and Colorado Interstate Gas Co., 29 IBLA 154 (Mar. 4, 1977)

The interpretation of the Mineral Leasing Act of 1920 set forth in the Oct. 4, 1976, Solicitor's Opinion (M-36888) is compelled by the statute.

Terms of an oil and gas lease inconsistent with the statute are equally as invalid as a regulation which operates to create a rule out of harmony with the statute.

A lessee gains no rights through a lease which could not be bestowed lawfully, since regulations or lease terms inconsistent with the statute are invalid.

The involuntary invalidation of a lease term does not amount to pro tanto cancellation of the lease.

The Oct. 4, 1976, Solicitor's Opinion (M-36888), in effect, found that the Secretary, by permitting exemptions from royalty requirements for oil and gas used for production purposes or unavoidably lost, was alienating the royalty interest of the United States on certain leases without authority to do so.

Court cases indicate that it is in the Secretary's discretion to apply the corrected interpretation of the statutes in the collection of additional royalty retroactively or prospectively based on equitable considerations.

The Secretary is limited in the exercise of this authority only by the rule of estoppel where the application of the corrected interpretation of law threatens to work a serious injustice and if the public's interest would not be unduly damaged by the imposition of estoppel.

Effect of Oct. 4, 1976, Solicitor's Opinion M-36888, M-36888 (Supp. II) (Mar. 9, 1977) 84 I.D. 171

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, proposed special stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest. It is the Bureau's responsibility to impose stipulations which are necessary, appropriate and reasonably related to oil and gas activities, and a stipulation which would forbid the lessee to occupy the surface must be set aside on appeal where BLM fails to provide adequate justification for its imposition and fails to show that it has considered less stringent stipulations.

Neva H. Henderson, 31 IBLA 217 (July 6, 1977)

The authorized officer may not deem an oil and gas rental payment to have been timely filed, pursuant to 43 CFR 1821.2-2(g) if it is received at the State Office when it is not open to the public, even though the payment is presented on the last day in which payment can be made. Such payment is deemed to have been made on the day and hour the office is next open to business, as provided in 43 CFR 1821.2-2(d).

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental on time as required by sec. 31 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 188(b) (1970), where 20 minutes before the State Office closes to the public on the last day on which rental can be paid, petitioner instructs by telephone an agent who lives in the vicinity of the State Office to make the payment and the agent who alleges she was delayed by traffic and security measures makes payment after the office is closed to the public. In such circumstances the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Bob Burch, 32 IBLA 93 (Sept. 12, 1977)

In determining whether an oil and gas lessee exercised reasonable diligence to warrant reinstatement of a terminated lease the postmark date on the rental payment envelope is generally deemed the date of mailing unless there is satisfactory evidence to support an assertion that mailing occurred at an earlier date.

David R. Smith and Darla L. Smith, 33 IBLA 63 (Dec. 5, 1977)

Noncompetitive oil and gas leases are issued for a primary term of 10 years. Such leases expire automatically by operation of law at the end of their 10-year terms unless the presence of one of the statutory grounds for extension of the term is established.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

Where, rather than delay action on an oil and gas lease offer pending a wilderness review and management decision pursuant to sec. 603 of the Federal Land Policy and Management Act, the Bureau of Land Management proposes to issue the lease immediately subject to a "no surface occupancy" stipulation under the apparently mistaken impression that the applicant had so requested, the decision will be set aside and action on the lease offer will be deferred until a final decision can be made.

Dell K. Hatch and Amoco Production Co., 33 IBLA 1[illegible] (Dec. 19, 1977)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

30 U.S.C. § 188(b)(1970), and its implementing regulation 43 CFR 3108.2-1, requiring a notice of deficiency on a form approved by the director apply only to rental payments due on the anniversary dates of noncompetitive oil and gas leases, and are inapplicable to deficient initial rental payments for noncompetitive oil and gas lease offers.

Evelyn Chambers, 33 IBLA 271 (Jan. 5, 1978)

Oil and gas lease offers may be rejected where legal title to the lands in issue is uncertain. It is not improper for BLM to refuse to suspend the offers pending determination of the title issue.

W L Industries, Inc., 34 IBLA 99 (Feb. 23, 1978)

Appellant's charges in respect of filing of registration statements for compliance with securities laws go to question of relationships between filing service companies and their investors, and as such, are properly for consideration by Securities and Exchange Commission. Where they do not indicate noncompliance with oil and gas leasing statutes and regulations, such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

Elias C. Bacil, 34 IBLA 322 (Apr. 24, 1978)

An offer to lease for oil and gas is properly rejected where payment for the first year's advance rental is not received in the appropriate office of the Bureau of Land Management within 15 days after a Notice of Rental Due is received by the offeror pursuant to 43 CFR 3112.4-1.

Susan Dawson, 35 IBLA 123 (May 15, 1978)

Appellant's charges in respect of filing of registration statements for compliance with securities laws go to question of relationships between filing service companies and their investors, and as such, are properly for consideration by Securities and Exchange Commission. Where they do not indicate noncompliance with oil and gas leasing statutes, regulations, and decisions of this Department, such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

Elias C. Bacil, 35 IBLA 198 (May 24, 1978)

An oil and gas offer describing land which cannot be encompassed within a 6-mile square is defective and must be rejected, and where a lease is issued for part of the land embraced in the offer it must be canceled as to that land which is embraced in a proper offer filed prior to the issuance of the lease in order that the statutory preference right of the party first making a proper offer may be honored.

Robert W. David, 35 IBLA 205 (May 26, 1978)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The boundary of an oil and gas lease covering lands riparian to a navigable river is the meander line indicated on the official plat of survey and not the waterline. Thus, lands accreted to the leased lands may be separately leased.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

An oil and gas lease is "issued" on the day it is signed by the authorized officer of the Department of the Interior, although it is not effective, per 43 CFR 3110.1-2, until the first day of the month following its date of issuance.

Mobil Oil Corp., 35 IBLA 375 (June 23, 1978)
85 I.D. 225

The Department of the Interior has the authority to issue orders to oil and gas lessees to protect all of the natural resources of the Continental Shelf. An order which requires lessees to shut in wells during welding or burning operations will be sustained on appeal as not being arbitrary or unjustified where the record shows that a number of companies had followed the practice even when it was not required, where the order is not so prohibitive as to effect a pro tanto cancellation of the lease, and where departures from the order may be granted in certain situations.

Exxon Corp., 36 IBLA 185 (Aug. 1, 1978)   85 I.D. 387

Noncompetitive oil and gas leases ar eissued for primary terms of 10 years. Unless one of the statutory grounds for extension is established, such leases expire by operation of law at the end of their primary term.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

Where the State Office, following recommendations of the National Park Service, rejects applications for oil and gas leases under the "excepted areas" provisions of 43 CFR 3111.1-3(e)(4), and where it appears that large portions of the applied-for lands do not fall within such areas, the case will be remanded with instructions to reconsider whether the leasing of lands not in excepted areas would be appropriate.

D. L. Purcell, 37 IBLA 272 (Oct. 20, 1978)

D. L. Purcell, 40 IBLA 126 (Mar. 28, 1979)

An application for an oil and gas lease filed in the name of a person deceased at the time of filing is properly rejected as there then was no offeror qualified to hold a lease.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

The use of a post office box number as an address is not barred by the oil and gas leasing regulations governing applications or by the Rules of Practice of the Department.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Where an offer is drawn No. 1 for a tract consisting of 39.97 acres, BLM requests payment specifically of $40 advance rental, and the offeror remits $39.97 within the 15-day period spelled out in 43 CFR 3112.4-1, the submittal of $39.97 does not constitute satisfactory payment within the ambit of that regulation.

Milton Knoll, 38 IBLA 319 (Dec. 19, 1978)

Where an offeror for a noncompetitive, over-the-counter oil and gas lease certifies that he is a United States citizen, his failure to disclose whether he is a native-born or naturalized citizen will not support rejection of his offer where an offeror for a noncompetitive, simultaneous oil and gas lease is not required to disclose similar information.

Jas. O. Breene, Jr., 39 IBLA 43 (Jan. 16, 1979)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas lease offer filed for such land must be rejected.

Alyce C. Duncan, 39 IBLA 144 (Jan. 29, 1979)

The maxim, expressio unius est exclusio alterius, will not be utilized to contradict or vary a clear expression of legislative intent.

When a State Office rejects the offer of a first-drawn applicant in a drawing under the simultaneous oil and gas leasing program, an appeal by the applicant raises the issue of his qualifications to hold the lease. The qualifications of the second-drawn applicant are irrelevant until such time as the offer of the first-drawn applicant is rejected and all his avenues of appeal are exhausted. However, it is not improper for BLM to name the second-drawn applicant as an adverse party in a decision rejecting the first-drawn applicant.

Thomas R. Flickinger, William S. Flickinger, et al., 40 IBLA 53 (Mar. 16, 1979)

An oil and gas lease which is in its extended term because of production terminates when production ceases unless pursuant to 30 U.S.C. § 226(f) (1976): (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in producing status at least within 60 days of receipt of notice to do so.

Vern R. Bolinder and Julienne J. Bolinder, 40 IBLA 164 (Apr. 3, 1979)

It is proper to set aside a decision which raises questions concerning the facts asserted by BLM in rejecting an oil and gas lease offer, and to remand the case to BLM for further review and consideration of appellant's allegations.

Robert W. David, 40 IBLA 236 (Apr. 16, 1979)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Generally, the signing of an oil and gas lease by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease. When land is determined to be within a known geologic structure prior to authorized issuance of a lease, noncompetitive lease offers must be rejected and the land may be leased only by competitive bidding.

United States v. William T. Alexander (On Court Remand), 41 IBLA 1 (May 21, 1979)

Oil and gas offers, filed for lands withdrawn by PLO No. 5418, must be rejected. The order was issued under the authority of the Pickett Act, 43 U.S.C. §§ 141-142 (1970), repealed by FLPMA, and the order was not arbitrary, capricious, or an abuse of discretion.

Bristol Bay Native Corp., 41 IBLA 85 (June 4, 1979)

The requirement of forfeiture of the bid deposit if the qualified high bidder fails to enter a lease must be enforced to prevent those bidders with greater capital resources from gaining an unfair advantage.

Fred S. Ghelarducci, 41 IBLA 277 (June 26, 1979)

Not all persons may be qualified to be lessees. Signing and dating the entry card constitute certification by the offeror of his qualifications as of a date certain.

As used in 43 CFR 3112.2-1, the term "fully executed" means that the applicant must, in order to render the entry card a valid and complete offer to lease, supply the information requested thereon, including the date.

Harry A. Zuckerman et al., 41 IBLA 372 (July 23, 1979)

An oil and gas lease may be awarded to the first-qualified applicant only. The regulations governing qualifications are mandatory, and strict compliance therewith is required.

A defective drawing card offer for an oil and gas lease is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second- and third-drawn qualified offerors have intervened. Where appellant's offer was third drawn and eventually accorded priority and then ultimately disqualified, the parcel described therein must be included in a subsequent list of lands available for simultaneous filing.

An offeror for oil and gas lease may withdraw his offer at any time prior to the drawing. However, the filing fee is retained as a service charge irrespective of the outcome of the drawing.

Don C. Bell II (Trustee), 42 IBLA 21 (July 25, 1979)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is $1,955, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for $1,954 within the time required, but fails to submit the $1 deficiency within the allowed time.

C. Panus, 42 IBLA 326 (Aug. 30, 1979)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The State laws applicable to Federal oil and gas leases are limited to those classes of laws authorized or recognized by sec. 32 of the Mineral Leasing Act, *as amended*, 30 U.S.C. § 189 (1976).

Where an applicant with first priority dies after filing an oil and gas lease application but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed in all cases an offer to lease in compliance with 43 CFR 3102.8. Such offer will be effective as of the date of the original lease offer filed by the deceased.

James P. Richardson, Jr., 42 IBLA 333 (Aug. 30, 1979)

Prior to passage of the Multiple Mineral Development Act, 30 U.S.C. §§ 521-31 (1976), a prima facie valid mineral lease, or application therefor, though void and ineffectual to vest any rights to minerals subject to the mining laws in the lessee segregated the land from the operation of the mining laws and prevented the initiation of rights under the mining laws by another person until it had been set aside and removed from the records of the land office.

Charles House, Mrs. Leonard Skipper, 42 IBLA 364 (Sept. 11, 1979)

Failure to execute a lease results in forfeiture of the bid deposit by the high bidder in a competitive oil and gas lease sale.

Bernard F. Gencorelli, 43 IBLA 7 (Sept. 11, 1979)

Noncompetitive oil and gas leases are issued for a primary term of 10 years. Unless one of the statutory grounds for extension is established, such leases expire by operation of law at the end of their primary term.

James E. and Mary E. Groboski, 43 IBLA 94 (Sept. 19, 1979)

Land within the National Desert Wildlife Range is not subject to noncompetitive oil and gas leasing.

Kenneth F. Cummings, 43 IBLA 110 (Sept. 28, 1979)

Where an applicant with first priority dies after filing an oil and gas lease application but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

Estate of F. J. Bradshaw, 44 IBLA 107 (Nov. 20, 1979)

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Oil and gas offers should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

David H. Yates, 44 IBLA 121 (Nov. 27, 1979)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES

The Department has discretionary authority to issue or not to issue leases under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970).

In exercising its discretion to lease or not to lease oil and gas under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970), the Department may reject an oil and gas lease offer filed thereunder, where the minerals are held in trust for the Shoshone and Arapaho Indians and are leasable under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Co., 18 IBLA 326 (Jan. 7, 1975)

An oil and gas lease offer which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is properly rejected.

Judith Walker, Ginger Lawhon, 18 IBLA 410 (Feb. 10, 1975)

In a noncompetitive oil and gas lease offer for acquired lands in which the United States owns a fractional present interest, 43 CFR 3130.4-4 requires offeror to submit a statement detailing the extent of his ownership in operating rights not owned by United States, regardless of whether the United States owns 50 percent or more of operating rights.

Where an unamended senior offer for a noncompetitive fractional oil and gas lease on acquired lands is not in compliance with 43 CFR 3130.4-4, a junior offer obtains priority to extent of conflicts between competing filings, and the junior offeror's protest must be sustained.

Frederick L. Smith et al., 19 IBLA 162 (Mar. 14, 1975)

An offer for an oil and gas lease under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

Shell Oil Co., 20 IBLA 292 (May 27, 1975)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, successfully drawn at a noncompetitive lease simultaneous drawing is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

George H. Isbell, Jr., 20 IBLA 312 (May 30, 1975)

An oil and gas lease offer for acquired lands will be rejected unless all the copies of the application required by the regulation, 43 CFR 3111.1-2, are signed.

Duncan Miller, 21 IBLA 50 (June 17, 1975)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

An acquired lands lease offer for land in which the United States owns only a fractional mineral interest is defective and subject to rejection when the applicant fails to accompany his offer with the statement required by the regulations showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror subsequently submits his statement regarding ownership of operating rights prior to a final decision rejecting the offer, the defect may be considered cured with priority of filing as of the time the statement was filed.

John Oakason, Jean Oakason, 21 IBLA 105 (July 25, 1975)

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-59 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Frederick L. Smith, 21 IBLA 239 (Aug. 11, 1975)

Sallie B. Sanford, 24 IBLA 31 (Feb. 17, 1976)

Charles F. Hajek and Frederick L. Smith, 29 IBLA 330 (Mar. 31, 1977)

Geo, Inc., 34 IBLA 27 (Feb. 14, 1978)

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with certain title information in the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany the offer with the statement required by the regulation showing the extent of ownership of operating rights to the fractional mineral interest not owned by the United States.

Margaret Hughes Burns, 22 IBLA 146 (Sept. 30, 1975)

Michael Shearn, 24 IBLA 259 (Mar. 29, 1976)

Robert L. Williams, 24 IBLA 331 (Apr. 20, 1976)

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

Beatrice L. Marchand, 26 IBLA 180 (Aug. 9, 1976)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Paradox Oil and Gas Co., 22 IBLA 242 (Oct. 22, 1975)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the land as a condition precedent to the issuance of the lease, or suffer rejection of the offer.

Sallie B. Sanford, 22 IBLA 289 (Oct. 30, 1975)

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with reasonable title information in the county recorder's offices as a precondition to lease issuance.

Jean Oakason, 22 IBLA 311 (Nov. 10, 1975)

When an agency with jurisdiction over acquired lands has requested a short-term suspension of oil and gas lease offers, a decision rejecting the offers may be remanded to consider processing the offers in a manner consistent with that of a similar offer for which the agency has also accepted a suspension.

Chevron Oil Co., 23 IBLA 163 (Dec. 23, 1975)

A noncompetitive oil and gas lease offer for acquired land in an incorporated city, is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes such lands from its provisions.

Sallie B. Sanford, 23 IBLA 312 (Jan. 16, 1976)

Uncertainty of title to oil and gas in an acquired land tract is sufficient ground for the rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. The burden is on the lease applicant to demonstrate that the minerals he seeks to lease are owned by the United States as an acquired interest. A decision rejecting an offer will be affirmed where appellant has failed to meet this burden and a significant question of title remains.

Don Jumper, 24 IBLA 218 (Mar. 24, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by 43 CFR 3130.4-4 showing the extent of his ownership of operating rights for the fractional mineral interest not owned by the United States.

June Brooks, 25 IBLA 326 (June 30, 1976)

Because the Mineral Leasing Act for Acquired Lands specifically excludes the leasing of land located within an incorporated city, town, or village, a noncompetitive oil and gas lease offer for acquired land within the boundaries of such a city, town, or village is properly rejected.

James L. Santy, 25 IBLA 390 (July 6, 1976)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

A simultaneous acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interests not owned by the United States, nor can such defect be cured by submitting the information on appeal.

Jelenko Stefanovic, 26 IBLA 229 (Aug. 17, 1976)

Where title to the minerals in a tract of acquired land which is the subject of an oil and gas lease offer cannot be determined from records in the possession of the BLM, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. Applicant may be required to furnish evidence from the county recorder's office in the nature of a title abstract sufficient to allow the Solicitor to render a legal opinion regarding title to the oil and gas in the tract sought for leasing. Rejection of the offer in the exercise of the Secretary's discretion over leasing is proper where applicant declines to provide such information.

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant is not sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a United States interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Jean Oakason, 27 IBLA 41 (Sept. 22, 1976)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, is defective and is properly rejected when the applicant fails to accompany its offer with the statement required by the regulation showing the extent of its ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror submits its statement of operating rights with its appeal, the defect may be considered cured with priority of filing as of that time.

Arkansas Western Gas Co., 27 IBLA 207 (Oct. 6, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Frank G. Wells, 28 IBLA 113 (Nov. 15, 1976)

Susan B. Smith, 28 IBLA 173 (Nov. 24, 1976)

An oil and gas lease offer made pursuant to the Mineral Leasing Act for Acquired Lands is properly rejected where the subject lands are not acquired lands but, rather, are patented with a reservation of mineral rights in the United States.

John C. Clay, 28 IBLA 353 (Jan. 24, 1977)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Duncan Miller, 29 IBLA 1 (Feb. 7, 1977)

Mary Nan Spear, 31 IBLA 386 (Aug. 16, 1977)

Under the Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1970), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the consent of the Secretary of the Interior is necessary under the Act to the leasing of the land. Where the National Park Service recommends that oil and gas leases for lands within the boundaries of the Chickasaw National Recreation Area be rejected in order to maintain the area for the purposes for which it was established, it is proper to accept this recommendation and reject the offers.

Daphine Shear, David L. Shear, 29 IBLA 33 (Feb. 10, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. When an offeror submits, on appeal, a copy of such statement but the date on the statement differs from the date on the card, and the offeror does not allege he filed the statement simultaneously with the offer, such offer must be rejected for failure to comply with a mandatory regulation.

Duncan Miller, 29 IBLA 43 (Feb. 16, 1977)

Where acquired lands are under the jurisdiction of a bureau of the Department of the Interior, the Secretary is the one whose consent is necessary to the leasing of the land. The Bureau's views, of course, will be considered carefully. Where its views are merely conclusionary, it is proper to remand the case to ascertain the factual basis of such conclusions and whether leasing would be permissible if coupled with appropriate stipulations. The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act. 30 U.S.C. §§ 351-59 (1970).

The Mineral Leasing Act for Acquired Lands, *as amended*, 30 U.S.C. §§ 351-59 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Walter W. Sapp, 29 IBLA 319 (Mar. 30, 1977)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

Where material involving a prior mineral reservation on acquired lands is first submitted on appeal, and the effect of a State statute and State court decree is in issue, it is appropriate to remand the case to the BLM State Office for further consideration.

A. M. Henderson, 30 IBLA 8 (Apr. 4, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Oct. 28, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Vernon C. Howell, 30 IBLA 70 (Apr. 18, 1977)

The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act, 30 U.S.C. §§ 351-59 (1970). Where acquired lands are under the jurisdiction of a Bureau of the Department of the Interior, it is the Secretary's consent which is necessary to the leasing of land. The Bureau's views will be given careful consideration. However, where such views are merely conclusional, it is proper to remand the case to ascertain the factual basis for such conclusions and to determine whether leasing may be permissible if coupled with appropriate stipulations.

Shell Oil Co., 30 IBLA 127 (May 19, 1977)

Kent E. Peterson, 30 IBLA 199 (May 20, 1977)

The lessee of an acquired lands oil and gas lease issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), the lease must be deemed to have terminated at the end of its stated term.

A petition for reinstatement of an acquired lands oil and gas lease terminated for lack of timely payment of the rental is properly denied where the lessee fails to show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The error of an employee in failing to recognize that rental payment was required for the leases in question does not justify the failure to make a timely payment.

Shell Oil Co., 30 IBLA 290 (June 1, 1977)

Where the United States owns only fractional mineral interest in the land, an offer filed before Sept. 30, 1976, for a simultaneous oil and gas lease drawing, must be rejected where it is not accompanied by a statement showing extent of offeror's ownership of operating rights in fractional mineral interest not owned by the United States.

Bruce T. Cameron, Carol Heller, 31 IBLA 234 (July 12, 1977)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

Where the regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for acquired land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States, a simultaneously filed oil and gas lease offer which is not accompanied by the required statement must be rejected.

Where a regulation requires that an acquired lands oil and gas lease offer be accompanied by a separate statement as to the offeror's ownership of operating rights to the fractional mineral interest not owned by the United States, and the offer is rejected for noncompliance therewith, the offeror's bald assertion that he filed such statement is insufficient to prove such a fact without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

W. J. Langley, 32 IBLA 118 (Sept. 12, 1977)

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired minerals owned by the United States are subject to leasing under that Act.

Duncan Miller, 32 IBLA 137 (Sept. 12, 1977)

A recommendation by the Bureau of Reclamation that issuing oil and gas leases on acquired land under its administration would jeopardize further acquisitions, should be given careful consideration, but the Bureau of Land Management must independently evaluate whether issuing the leases would be in the public interest.

An independent evaluation of whether the issuance of oil and gas leases on acquired lands would be in the public interest need, in some cases, consist only of an examination of the general character of the land. Where, however, the offeror raises material factual questions, these must be considered.

Harris R. Fender, 33 IBLA 216 (Dec. 22, 1977)

The Bureau of Land Management must reject a noncompetitive oil and gas lease offer for acquired lands under the jurisdiction of the Department of the Air Force where the latter agency withholds its consent from the issuance of a lease.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

Regulations in force prior to Oct. 28, 1976, prohibited, in the absence of extraordinary circumstances, the issuance of oil and gas leases for fractional interests to one who would own less than 50 percent of operating rights in the leased property. The later determination that such a policy may not in general serve the public interest and the expression of the new policy in a revised regulation does not constitute an extraordinary circumstance.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

Where acquired lands are under the jurisdiction of the Bureau of Reclamation, its opinion as to the desirability of issuing an oil and gas lease under the Mineral Leasing Act for Acquired Lands is not controlling, although its views will be considered carefully. Rather, it is up to the Bureau of Land Management to assemble information and to determine on the Department's behalf whether such a lease may be issued.

Where the Bureau of Land Management adopts the views of the Bureau of Reclamation, recommending rejection of an oil and gas lease offer for acquired lands within a wildlife area, without making an independent evaluation of the compatibility of oil and gas leasing with the intended function of the lands and without considering the feasibility of issuing the lease with appropriate protective stipulations, the matter is properly remanded to BLM for such independent evaluation and consideration, during which time the offeror may submit proposals for protective stipulations.

Esdras K. Hartley, 35 IBLA 137 (May 22, 1978)

An oil and gas lease offer for acquired lands will be rejected unless all the copies of the application required by the regulation, 43 CFR 3111.1-2, are filed.

Where an oil and gas lease offer for acquired lands is filed for less than the entire tract acquired by the United States, the regulations in 43 CFR 3102.2-3(b)(1) require that the application must describe the land by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land.

Robert N. Enfield, 36 IBLA 383 (Aug. 31, 1978)

The Mineral Leasing Act for Acquired Lands does not exclude from oil and gas leasing those lands underlying the Missouri River within the boundaries of the Fort Berthold Indian Reservation as established by the Treaty of Fort Laramie (1851) and the Executive Order of Apr. 12, 1870, which were reacquired by the United States from the Indian tribes. The exclusion in the Act for submerged lands refers to submerged coastal lands, as set forth in 43 CFR 3101.2-1(g).

Jarel Energy Corp., 42 IBLA 105 (Aug. 16, 1979)

Lands which were acquired for development of their uranium deposits are not subject to oil and gas leasing under the Mineral Leasing Act for Acquired Lands.

Esdras K. Hartley, 44 IBLA 66 (Nov. 20, 1979)

ACREAGE LIMITATIONS

An oil and gas lease issued for 2,960 acres in violation of administrative regulations need not be canceled in its entirety, in the absence of an intervening qualified applicant.

John T. Stewart III, Harlan C. Altman, Jr., Trustee, 25 IBLA 306 (June 28, 1976) 83 I.D. 247

OIL AND GAS LEASES--Continued

ACREAGE LIMITATIONS--Continued

The record-title holder of an oil and gas lease or offer is chargeable with the full acreage included in the lease or offer, even though another person, association, or corporation has a 50-percent interest in the lease or offer.

Arjay Oil Co., 30 IBLA 212 (May 20, 1977)

An oil and gas lease issued for land available for leasing, but in violation of an administrative regulatory requirement, need not be canceled in the absence of an intervening qualified applicant or some overriding policy consideration.

Merle C. Chambers, 40 IBLA 144 (Mar. 29, 1979)

APPLICATIONS

Generally

The Department has discretionary authority to issue or not to issue leases under the Mineral Leasing Act for Acquired Land , 30 U.S.C. §§ 351-59 (1970).

General Crude Oil Co., 18 IBLA 326 (Jan. 7, 1975)

An oil and gas lease offer which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is properly rejected.

Judith Walker, Ginger Lawson, 18 IBLA 410 (Feb. 10, 1975)

As a condition precedent to the issuance of an oil and gas lease, the Department of the Interior may require an applicant to accept a reasonable surface management stipulation for the protection of wildlife and watershed values.

Richard P. Cullen, 18 IBLA 414 (Feb. 10, 1975)

No law or regulation requires the mandatory rejection of an oil and gas lease offer merely because it is held in suspense for 1 year. The setting of a specific time limit on the suspension of an oil and gas offer is not a determination in the exercise of the Secretary's discretionary authority of whether or not to lease the lands for oil and gas.

Justheim Petroleum Co., 18 IBLA 423 (Feb. 13, 1975)

Where the Forest Service suggests a stipulation barring any occupancy and use of the surface as a condition precedent to the issuance of an oil and gas lease for public lands in a national forest, based only on the fact that the land is in an "inventoried roadless area," and where later the Forest Service agrees to a revised stipulation, the Bureau of Land Management decision to the extent it required the execution and filing of the "Roadless Area" stipulation will be set aside and the case remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

James A. Krumhansl, 19 IBLA 56 (Feb. 21, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where the Forest Service requests a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, based on the fact that the land is in an "inventoried roadless area," and where the Forest Service later substitutes a less restrictive stipulation, a Bureau of Land Management decision requiring the execution and filing of the roadless area stipulation will be vacated and the case will be remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

Benjamin T. Franklin, 19 IBLA 94 (Mar. 4, 1975)

Land formerly included in a canceled or relinquished lease or in a lease terminated or expired by operation of law shall be subject to filing of new lease offers only as provided in 43 CFR 3112.

Duncan Miller, 19 IBLA 188 (Mar. 18, 1975)

An oil and gas lease offer must be rejected when, before the lease offer has been accepted, the land applied for has been patented with no reservation of oil and gas to the United States.

It is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application.

Lloyd W. Levi, 19 IBLA 201 (Mar. 19, 1975)

Yolanda Hockel et al., 19 IBLA 204 (Mar. 19, 1975)

Under the policy of the Secretary of the Interior of maintaining on file oil and gas lease offers for lands in Alaska filed prior to the issuance of Public Land Order 4582 on Jan. 17, 1969, an offer which would ultimately require rejection because of the unavailability of the land at the time the offer was filed, will not be retained on file, but may be properly rejected at any time when the case is reached for adjudication.

Vance W. Phillips and Melissa A. Burnham, 19 IBLA 211 (Mar. 21, 1975)

Oil and gas lease applications, action on which was suspended under Public Land Order 4582, 34 FR 1025 (1969), are properly rejected when the lands are subsequently patented to the State of Alaska under selection applications even though the latter postdate the oil and gas lease applications; the first-qualified oil and gas lease applicant has no right or interest in the land applied for which is protected by the savings clauses of the Alaska Statehood Act and the Alaska Native Claims Settlement Act.

Haruyuki Yamane et al., 19 IBLA 320 (Apr. 7, 1975)

Under the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 181 *et seq.* (1970), the first-qualified applicant has a preference right to receive an oil and gas lease where the Department of the Interior has in the exercise of its discretion, determined to issue such a lease. But a lease offer does not create a vested interest where there has been no determination to lease the lands embraced in the lease offer. In the latter instance, the application for a lease is a hope or expectation rather than a valid claim against the

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Government, and the lease offeror has acquired no rights which are violated by issuance of a patent to the State of Alaska for the lands embraced in the lease offer.

An oil and gas lease offer must be rejected when approval is given to a subsequently filed State selection embracing the same lands, including the mineral rights. Following issuance of patent to the State, the Department loses jurisdiction over the patented land.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer was formerly included in a terminated oil and gas lease, and which may be leased only in compliance with the simultaneous filing procedures set out in 43 CFR 3112.

Duncan Miller, 20 IBLA 1[illegible] (Apr. 16, 1975)

The Department of the Interior has full and final authority to determine whether or not to issue oil and gas leases. Where the lands embraced within an oil and gas lease offer contain established archaeological sites and in the opinion of the responsible Departmental officials oil and gas exploration activities would destroy or impair the sites, a lease offer is properly rejected, absent an affirmative showing on behalf of the offeror that exploration activities would not infringe upon the archaeological resources of the area.

R[illegible]ita Trujillo, 20 IBLA 54 (Apr. 24, 1975)

Sec. 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims does not apply to an oil and gas lease offer filed pursuant to the Mineral Leasing Act of 1920. While an oil and gas lease offeror may have a right to a lease where the Department has exercised its discretion to issue a lease, and the offeror is entitled to a statutory priority right over other offerors, his application does not rise to the level of a "claim" or "right" within the savings clause of the Alaska Statehood Act where there has been no such determination to lease.

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first-qualified applicant in the event the Department decides to issue a lease.

Richard W. Bowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

The unilateral mistake of an oil and gas lease offeror in withdrawing his offer does not relieve him of the consequences of the withdrawal, which is, that the offer is terminated when the Bureau of Land Management receives the withdrawal.

John J. Sexton (On Reconsideration), 20 IBLA 187 (May 7, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where an application to lease land under the jurisdiction of another agency is rejected because of objections by that agency, and where on appeal that agency subsequently agrees to lease the land subject to certain special stipulations, such stipulations will be submitted to the offeror for execution.

Shell Oil Co., 20 IBLA 282 (May 27, 1975)

Oil and gas lease offers embracing lands withdrawn or reserved for any agency of the Department of Defense may not be granted without the consent of that Department. 43 U.S.C. § 158 (1970). Such lease offers must be rejected where such consent is withheld as inconsistent with the military use, and the offers may not be suspended to await the possible availability of the lands for leasing.

Mobil Oil Corp., 20 IBLA 296 (May 27, 1975)

Drawing entry cards for simultaneous oil and gas lease offers which are incomplete will be rejected and the filing fees will be retained.

Albert F. Mitchell III, 20 IBLA 302 (May 30, 1975)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, successfully drawn at a noncompetitive lease simultaneous drawing is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

George B. Isbell, Jr., 20 IBLA 312 (May 30, 1975)

Where the Bureau of Land Management changes an administrative practice to thereafter refuse to accept unofficial copies of the simultaneous oil and gas lease entry card, by an order dated Mar. 26, 1975, the new practice will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Feb. 1975 simultaneous filing period.

F. J. Malloy, 20 IBLA 327 (June 6, 1975)

An oil and gas lease application covering lands in an outstanding lease, whether that lease is valid, void or voidable, must be rejected. A noncompetitive oil and gas lease offer covering lands in a known geologic structure must be rejected, such lands being subject to lease only by competitive bidding.

Duncan Miller, 21 IBLA 21 (June 16, 1975)

An oil and gas lease offer for acquired lands will be rejected unless all the copies of the application required by the regulation, 43 CFR 3111.1-2, are signed.

Duncan Miller, 21 IBLA 50 (June 17, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

It is the date of the ascertainment by the Geological Survey of the producing character of a structure underlying a tract of land and not the date of the pronouncement of said fact which is determinative of rights depending on whether or not the land is situated within a known geological structure (KGS). A noncompetitive oil and gas lease offer must be rejected if, at any time before a lease actually issues, the land described therein becomes within a KGS, even if the offer was filed prior to the ascertainment of the KGS.

William T. Alexander, 21 IBLA 56 (June 18, 1975)

The failure of the offeror for a noncompetitive oil and gas lease to complete that part of item 2 of the lease offer form calling for the extent of the interest of the United States in oil and gas if less than 100 percent does not by itself necessitate rejection of the offer as the offer is held to include "any and all" lands described therein and whatever mineral interest the United States owns in said lands and thus becomes an offer for whatever interest is available.

John Oakason, Jean Oakason, 21 IBLA 185 (July 25, 1975)

The mere filing of a noncompetitive oil and gas lease offer does not invest the offeror with any right to receive a lease. The only right created thereby is the right to an appropriate priority of consideration if, at the discretion of the Department, an oil and gas lease is to be issued for the land which is the subject of the offer.

It is proper to reject an oil and gas lease offer to the extent of conflict with an Alaska State selection application after the application has been tentatively approved even though the offer was filed before the selection application.

C. Burglin et al., 21 IBLA 234 (Aug. 11, 1975)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within 15 days after the filing of the lease offer, the offer must be rejected.

Emily Sonnek, 21 IBLA 245 (Aug. 11, 1975)

Charmay B. Allred, Edward C. Allred, 26 IBLA 276 (Aug. 24, 1976)

Drawing entry cards for simultaneous oil and gas lease offers will be rejected and the filing fees retained where the applications are not made on the correct form.

John F. Brown, 21 IBLA 260 (Aug. 11, 1975)

Where the Forest Service requests imposition of a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, the case will be set aside and remanded for consideration of a less stringent stipulation which the Forest Service has agreed to in other cases arising in the same and other national forests in Utah.

G. W. Anderson, 21 IBLA 328 (Aug. 14, 1975)

An oil and gas lease offer filed in the name of a corporation is properly rejected where the offer is signed by an officer who was not shown, by the corporate qualification papers contained in the company's referenced serial number, to be one of the officers authorized to sign for the company, and the offer was not accompanied by a statement showing that he was authorized to act for the company.

Manhattan Resources, Inc., 22 IBLA 24 (Sept. 9, 1975)

A Bureau of Land Management office has no jurisdiction to take further action on an oil and gas lease application where there has been an appeal to the Board of Land Appeals on that application.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

Land included in an oil and gas lease which terminates by operation of law for failure to pay rental timely, is subject to filing of new oil and gas lease offers only in accordance with the provisions of the regulations relating to simultaneous filing of oil and gas lease offers, and the filing of an over-the-counter lease offer will not interdict the simultaneous filing procedure as to that land.

Vern H. Bolinder, 22 IBLA 130 (Sept. 26, 1975)

Land included within an outstanding oil and gas lease is not available for leasing and an application filed for such land must be rejected.

Land, formerly in a canceled, relinquished, terminated, or expired lease, is not subject to over-the-counter filing, and may be leased only in compliance with the drawing procedure established by 43 CFR 3112.

John F. Brown, 22 IBLA 133 (Sept. 26, 1975)

Filing fees may be retained when drawing entry cards made on reproduced forms are rejected.

Charles J. Babington et al., 22 IBLA 143 (Sept. 30, 1975)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany the offer with the statement required by the regulation showing the extent of ownership of operating rights to the fractional mineral interest not owned by the United States.

Margaret Hughes Boggs, 22 IBLA 146 (Sept. 30, 1975)

Michael Shearn, 24 IBLA 259 (Mar. 29, 1976)

Robert L. Williams, 24 IBLA 311 (Apr. 20, 1976)

Beatrice E. Marchand, 26 IBLA 100 (Aug. 9, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

On appeal from decision(s) rejecting oil and gas lease offer(s) insofar as they include land(s) within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the land(s) under a no-surface-occupancy stipulation, and the offeror(s) indicate they would accept such a stipulation for all the land(s) at issue, the decision(s) will be set aside and the case(s) remanded for consideration of issuance of lease(s) containing no-surface-occupancy stipulation(s) on the land(s) in the lava flow.

Houston Oil and Minerals Corp., Leland A. Hodges (Trustee), 22 IBLA 172 (Sept. 30, 1975)

Leland A. Hodges (Trustee), 23 IBLA 142 (Dec. 23, 1975)

The mere filing of a noncompetitive oil and gas lease offer does not invest the offeror with any right to receive a lease. The only right created thereby is the right to an appropriate priority of consideration if, at the discretion of the Department, an oil and gas lease is to be issued for the land which is the subject of the offer, but it will not preclude the filing of a subsequent State selection application, nor bar approval of the State's application and the issuance of a patent to the State.

The notation on land office records of a noncompetitive oil and gas lease application does not prevent the State of Alaska from selecting the land pursuant to the Alaska Statehood Act.

Yukon Service, Inc., 22 IBLA 220 (Oct. 15, 1975)

Where an over-the-counter oil and gas lease offer is rejected because the applicant did not specify which of the described tracts he wanted the offer to include, he is presumed to have applied for all the tracts. Where on appeal he asserts that he desired to lease all the described lands, the decision will be reversed.

R. D. Hearn, 22 IBLA 226 (Oct. 15, 1975)

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the land as a condition precedent to the issuance of the lease, or suffer rejection of the offer.

Sallie B. Sanford, 22 IBLA 289 (Oct. 30, 1975)

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Connie Hull, 22 IBLA 307 (Nov. 10, 1975)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not signed or dated by the offeror.

Thomas Buckmann, 23 IBLA 21 (Nov. 26, 1975)

John Willard Dixon, 28 IBLA 275 (Dec. 20, 1976)

Thomas C. Moran, 32 IBLA 168 (Sept. 13, 1977)

Adobe Oil and Gas Corp., 34 IBLA 13 (Feb. 10, 1978)

William F. Riggs, 36 IBLA 403 (Sept. 6, 1978)

Continued--

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Harley W. Adams, Timothy J. Claiborne, Sr., 42 IBLA 22 (Aug. 22, 1979)

Harley W. Adams, 43 IBLA 144 (Sept. 28, 1979)

When an agency with jurisdiction over acquired lands has requested a short-term suspension of oil and gas lease offers, a decision rejecting the offers may be remanded to consider processing the offers in a manner consistent with that of a similar offer for which the agency has also accepted a suspension.

Chevron Oil Co., 23 IBLA 163 (Dec. 23, 1975)

Where an oil and gas lease offeror files a simultaneous oil and gas lease drawing card and indicates that its corporate qualifications are filed under a specific serial number, the offer will not be rejected where the corporation can show that the State Office informed it earlier that its corporate qualifications had been placed in that file.

Allied Chemical Corp., 23 IBLA 214 (Jan. 6, 1976)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is postdated beyond the date of the drawing.

Ray Flamm, 24 IBLA 10 (Feb. 4, 1976)

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

Paula J. Jones, 24 IBLA 76 (Feb. 24, 1976)

It is well established that the execution of appropriate special stipulations as a condition precedent to the issuance of oil and gas leases may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational, and other land use values.

While "no surface occupancy" stipulations should be of sufficient efficacy to protect the environment, no lease should issue with stipulations so restrictive that the use of the land for any purpose associated with the production of oil and gas is totally precluded.

The financial burden of complying with protective stipulations in oil and gas leases is the sole responsibility of the lessee.

Bill J. Maddox, 24 IBLA 147 (Mar. 10, 1976)

A decision suspending oil and gas lease applications for public land in a national forest because the Forest Service has not prepared an environmental impact statement on a roadless area will be set aside and the case remanded for the Bureau of Land Management, in the exercise of its delegated discretion to lease public lands for oil and gas, first to determine whether the Bureau should prepare an environmental impact statement

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

as the lead agency responsible for mineral leasing, and then to act on the offers accordingly.

Chevron Oil Co., 24 IBLA 159 (Mar. 15, 1976)

The financial burden of complying with stipulations included in an oil and gas lease is the sole responsibility of the lessee.

Duncan Miller, 24 IBLA 203 (Mar. 19, 1976)

A decision rejecting an oil and gas lease offer because the State Office wishes to reconsider whether a lease should issue subject to a no surface occupancy stipulation will be set aside and the case remanded for the Bureau of Land Management, in the exercise of its delegated discretion to lease public lands for oil and gas, to determine whether in the light of *Chevron Oil Co.*, 24 IBLA 159 (1976), it wishes to issue a lease subject to a no surface occupancy stipulation, or whether it still wishes to make the subject land not available for leasing at this time, which is within its authority.

Milan S. Papulak, 24 IBLA 278 (Mar. 30, 1976)

Simultaneous oil and gas lease drawing entry cards which are not executed correctly will be rejected. Where an ambiguity is created by an applicant on a drawing entry card, it is not the responsibility of BLM to speculate about applicant's intention and necessarily to resolve the ambiguity in his favor.

Joseph A. Winkler, 24 IBLA 380 (Apr. 29, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

Even if it be established that a controlling regulation had been violated in previous cases, such violation does not afford a valid predicate for further violations of the regulation.

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act.

The execution of special stipulations as a condition precedent to the issuance of an oil and gas lease may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational, and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

While the Bureau of Land Management may reject oil and gas lease offers or require stringent protective stipulations in order to protect the environment, such action must be supported by facts of record. Where such action is taken and is supported only by statements that leasing would not be in the public interest, the case will be remanded to the Bureau for a more complete exposition of the basis for the action.

Cartridge Syndicate, 25 IBLA 57 (May 20, 1976)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits the date of execution on the card, the lease offer is properly rejected.

Where an applicant fails to date a simultaneous oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and his offer is properly rejected whether the defect is discovered before or after the drawing. The fact that BLM entered the card in the drawing does not waive the defect.

John R. Pisick et al., 25 IBLA 107 (June 7, 1976)

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the State in which the parcel of land is located.

Ray Granat et al., 25 IBLA 115 (June 7, 1976)

Jerry Van Woerdhuizen, 26 IBLA 152 (Aug. 2, 1976)

Eleanor R. Neuberger, 29 IBLA 168 (Mar. 14, 1977)

Martin M. Sheets, 32 IBLA 7 (Aug. 29, 1977)

Where the Bureau of Land Management ordered on Mar. 26, 1975, that unofficial copies of the simultaneous oil and gas lease entry card were invalid and to be rejected, that order will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Jan. 1975 simultaneous filing period.

Eve Reese, 25 IBLA 244 (June 22, 1976)

An oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure must be rejected when the entry card contains the name of an additional party in interest and the required statement of the additional party's interest and qualifications is not filed within the time required by 43 CFR 3102.7. The filing of the required statement after that time has elapsed does not cure the defect.

John J. Gergurich, Farrell G. Seal, Thomas J. Sweeney, 25 IBLA 266 (June 24, 1976)

The bona fide purchaser provision of the Act of Sept. 21, 1959, 73 Stat. 571, *as amended*, 30 U.S.C § 184(h)(2) (1970), does not protect the assignee of a noncompetitive oil and gas lease offeror from the rejection of its assignor's offer after it is drawn first at a simultaneous drawing.

Leon M. Flanagan et al., 25 IBLA 269 (June 24, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure must be rejected when the entry card contains the name of an additional party in interest and the required statement of the additional party's interest and qualifications is not filed within the time required by 43 CFR 3102.7. The offeror is not retroactively excused from submitting the required statement by an assertion in his appeal that he is the sole party in interest because the anticipated association between him and the additional party listed on the entry card had failed to materialize.

James D. Caddell, 25 IBLA 274 (June 24, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by 43 CFR 3130.4-4 showing the extent of his ownership of operating rights for the fractional mineral interest not owned by the United States.

June Brooks, 25 IBLA 326 (June 30, 1976)

Simultaneous oil and gas entry cards which are sent to the wrong State Office are not considered filed in the "proper office" within the meaning of 43 CFR 1821.2-2(f), and such State Office has no jurisdiction over entry cards pursuant to 43 CFR 1821.2-1(c); therefore, the filing fees for such offers should not be retained.

Where a simultaneous oil and gas entry card is filed in the wrong State Office, the entry card and the filing fee should be returned to the offeror.

James H. Scott, 25 IBLA 384 (July 6, 1976)

Because the Mineral Leasing Act for Acquired Lands specifically excludes the leasing of land located within an incorporated city, town, or village, a noncompetitive oil and gas lease offer for acquired land within the boundaries of such a city, town, or village is properly rejected.

James L. Sauty, 25 IBLA 390 (July 6, 1976)

A simultaneous oil and gas lease offer is properly rejected where the drawing card is not signed.

A simultaneous oil and gas lease offer is properly rejected when the date is omitted from the drawing card.

Herbert W. Schollmeyer, 25 IBLA 393 (July 6, 1976)

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the State in which the parcel of land is located where called for on the card.

When the Secretary of the Interior determines that an oil and gas lease is to be issued for a particular tract, it must be issued to the first-qualified applicant. An applicant is not qualified because of his failure to comply with 43 CFR 3112.2-1(a) when he fails to provide the name of the State in which the parcel of land is located.

Ishmael Guerra, 26 IBLA 116 (July 26, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without a showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated basis for the imposition of the stipulation is the threat of oil and gas activities to automobile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern K. Jones et al., 26 IBLA 165 (Aug. 4, 1976)

A simultaneous acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interests not owned by the United States, nor can such defect be cured by submitting the information on appeal.

Jelenko Stefanovic, 26 IBLA 229 (Aug. 17, 1976)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and when the applicant omits her address, the lease offer is properly rejected and the filing fee properly retained.

Grace M. Williams, 26 IBLA 232 (Aug. 17, 1976)

Lands within a known geologic structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected.

James A. Wallender, 26 IBLA 317 (Aug. 30, 1976)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas lease offer filed for such land must be rejected.

The Secretary has discretionary authority to reject an oil and gas lease offer where Federal title to the oil and gas deposits is uncertain.

Leonard E. McSweyn, David A. Provinse, 26 IBLA 376 (Sept. 9, 1976)

An oil and gas lease offer for land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Grady Argenbright, 27 IBLA 24 (Sept. 17, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure is properly rejected as defective where there are other parties in interest in addition to the applicant but the card does not list them or refer to an attachment, and an attachment dated nearly 6 months prior to the filing, signed by the applicant and four others stating their qualifications and setting forth a percentage of interest for each as "Partners in interest," fails adequately to set forth the nature of their agreement, and no other statement or information is filed within the time required by 43 CFR 3102.7.

Harry Reich, 27 IBLA 123 (Sept. 30, 1976) 83 I.D. 507

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, is defective and is properly rejected when the applicant fails to accompany its offer with the statement required by the regulation showing the extent of its ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror submits its statement of operating rights with its appeal, the defect may be considered cured with priority of filing as of that time.

Arkansas Western Gas Co., 27 IBLA 207 (Oct. 6, 1976)

An oil and gas lease offer filed on behalf of a corporation may incorporate evidence of qualifications by reference to the serial number of a case record in which such evidence has already been filed with the Bureau of Land Management (BLM). However, reference to a file which contains no evidence of the authority of the officer signing the lease offer to execute such instruments on behalf of the corporation is not sufficient and requires rejection of the offer. The fact that the required evidence is on file in another State Office of the BLM under another serial number will not avail applicant where the lease offer contains no reference to that file.

Churchill Corp., 27 IBLA 234 (Oct. 12, 1976)

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue an oil and gas lease to anyone other than the first-qualified applicant. If an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed. Where a rubber stamp constitutes an applicant's signature, a State Office of the Bureau of Land Management need not presume that an applicant rather than an agent stamped the card, and where no agent's statement has been submitted, the State Office may take appropriate action to establish that the applicant's signature was imprinted at his request and that he formulated the offer.

Robert C. Leary et al., 27 IBLA 296 (Oct. 26, 1976)

Arthur S. Watkins, Robert M. Eckerman, 28 IBLA 79 (Nov. 12, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An unsigned and undated drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected.

Frank De Jong, 27 IBLA 313 (Oct. 29, 1976)

Milo M. Snider, 33 IBLA 42 (Nov. 25, 1977)

A simultaneous oil and gas drawing entry card must be fully executed by the applicants and when they omit their address or the State in which the parcel of land to be leased is located, the lease offer is properly rejected.

Hartley L. Gordon and James A. Lint, 27 IBLA 315 (Oct. 29, 1976)

Hartley L. Gordon and James A. Lint, 32 IBLA 139 (Sept. 12, 1977)

The signature of the offeror on a simultaneous oil and gas lease entry card may be affixed by means of a rubber stamp, if it is the intention of the offeror that it be his or her signature.

Evelyn Chambers, 27 IBLA 317 (Nov. 4, 1976) 83 I.D. 533

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp or other mechanical device to affix a signature to a drawing entry card, provided that it is the applicant's intention that the facsimile be his signature.

Where a facsimile affixed by means of a rubber stamp or other mechanical device constitutes an applicant's signature on a drawing entry card lease offer, a State Office of the Bureau of Land Management need not presume that the applicant, rather than an agent, stamped the card. It is proper for the BLM office to make inquiry into the filing to establish that the applicant's signature was affixed at his request and that he formulated the offer. If it is disclosed that the signature was affixed pursuant to a power of attorney, and the offer was not accompanied by the statements required by 43 CFR 3102.6-1, the offer must be rejected.

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue a noncompetitive oil and gas lease to anyone other than the first-qualified applicant. If a drawing entry card lease offer is signed by an agent or attorney-in-fact in behalf of the applicant, or if a facsimile signature of the applicant is affixed upon the offer by an agent or attorney-in-fact, the offer cannot be considered to have been submitted by a qualified applicant unless it is accompanied by the statements required by 43 CFR 3102.6-1.

William J. Sparks, 27 IBLA 330 (Nov. 4, 1976) 83 I.D. 538

A drawing entry card oil and gas lease offer given first priority in a drawing in the simultaneous filing procedure creates no vested right to a lease in the offeror, but merely the right of having her offer considered first for the parcel described. If the drawing entry card is defective, it must be rejected.

Amy B. Henthorn, 27 IBLA 369 (Nov. 4, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A simultaneous oil and gas drawing entry card must be fully executed by the applicant. When the applicant omits the zip code from his address on the card, the lease offer is properly rejected.

An applicant whose simultaneous oil and gas entry card is rejected because of a defect in his completion of the entry card cannot thereafter cure the defect by submitting a corrected entry card.

Raymond F. Kaiser, 27 IBLA 373 (Nov. 4, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

An oil and gas lease offer for lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. If an agent signs such statement, rather than the offeror, the regulations require that evidence be filed of the authority of the agent to sign the statement. The agent's signature will be acceptable only if the authorization meets the specifications of the regulations.

Frank G. Wells, 28 IBLA 113 (Nov. 1', 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Susan B. Smith, 28 IBLA 173 (Nov. 24, 1976)

The mere filing of a noncompetitive oil and gas lease offer does not invest the offeror with any right to receive a lease, except that if the Secretary determines to lease the land applied for the applicant has a preference right to a lease if he is the first fully qualified applicant.

Pinnacle Mining and Exploration Co., Inc., 28 IBLA 249 (Dec. 20, 1976)

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a Secretarial Order provides that all oil and gas noncompetitive offers must, prior to issuance of a lease, be referred to Geological Survey for a determination of whether the lands are within a known geological structure, and the authorized officer fails to follow such procedure prior to the signing, such signing is not authorized and, therefore, not binding on the Secretary.

Nola Grace Ptasynski (Supp.) (On Court Remand), 28 IBLA 256 (Dec. 20, 1976)

Where the record does not disclose sufficient facts upon which to make determinations whether a Bureau of Land Management officer who signed an oil and gas lease possessed the authority to do so, when the date of ascertainment of a known geologic structure actually occurred, and whether the United States Geological Survey had sufficient information to make a known geologic structure determination, a hearing may be ordered so that a complete record may be developed.

William T. Alexander (On Remand), 28 IBLA 277 (Dec. 22, 1976)

When a rubber stamp is used to affix a signature to a drawing entry card an no agent's statement has been submitted, a State Office of the Bureau of Land Management may take appropriate action to establish whether the applicant's signature was imprinted by him or at his request by an amanuensis and that he formulated the offer.

Mary E. Wiland, Elizabeth E. O'Donnell, 28 IBLA 300 (Jan. 10, 1977)

An oil and gas lease offer made pursuant to the Mineral Leasing Act for Acquired Lands is properly rejected where the subject lands are not acquired lands but, rather, are patented with a reservation of mineral rights in the United States.

John C. Clay, 28 IBLA 353 (Jan. 24, 1977)

An unsigned drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected.

Melvin C. Hudson, 28 IBLA 359 (Feb. 1, 1977)

An oil and gas lease entry card may be validly signed by the offeror's son where the offeror is an elderly woman who at times is incapable of making her own signature and it is her intention that the son's signing of her name be treated as if it were her own signature.

Rebecca J. Waters, 28 IBLA 381 (Feb. 4, 1977)

A successful simultaneously filed oil and gas lease entry card is not to be rejected because the card is signed prior to the date of the beginning of the simultaneous filing period unless it is dated more than 10 days prior to the date it is filed.

Kathryn J. Eckles, Harley L. Williamson, 28 IBLA 390 (Feb. 4, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Duncan Miller, 29 IBLA 1 (Feb. 7, 1977)

Mary Nan Spear, 31 IBLA 386 (Aug. 16, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. When an offeror submits, on appeal, a copy of such statement but the date on the statement differs from the date on the card, and the offeror does not allege he filed the statement simultaneously with the offer, such offer must be rejected for failure to comply with a mandatory regulation.

Duncan Miller, 29 IBLA 43 (Feb. 16, 1977)

Where the Bureau of Land Management has determined that lands listed under the simultaneous oil and gas leasing system should not have been listed solely because the lands lie within "a critical watershed which is to be the subject of an Environmental Impact Statement," the first-drawn offer will not be rejected but may remain in suspended state until completion of the EIS and determination at that time whether the lands may be leased subject to stipulations for protection of the watershed.

Adrian Overton, 29 IBLA 66 (Feb. 18, 1977)

Where an applicant fails to date a simultaneous oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and his lease offer is properly rejected.

Thomas V. Gullo & Joseph L. Bandazzo, 29 IBLA 126 (Feb. 23, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date.

Raymond N. Joeckel, 29 IBLA 170 (Mar. 14, 1977)

Milton J. Lebsack, 29 IBLA 316 (Mar. 30, 1977)

Doris N. Sterkel, Richard L. Sterkel, 30 IBLA 39 (Apr. 12, 1977)

X O Exploration, Inc., 30 IBLA 209 (May 20, 1977)

Francis L. Hill, 32 IBLA 202 (Sept. 16, 1977)

Thomas G. Fails et al., 32 IBLA 302 (Sept. 30, 1977)

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by corporate qualification papers nor by any reference to a serial number where such information might be found, as required by 43 CFR 3102.4-1.

Dal Metro Investment Co., 29 IBLA 198 (Mar. 22, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a State prefix in the parcel number, the lease offer is properly rejected.

Where an applicant fails to include the State prefix of the parcel number on an oil and gas drawing entry card, he/she has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and such offer is properly rejected whether the defect is discovered before or after the drawing.

Etta C. Harris, 29 IBLA 259 (Mar. 25, 1977)

An oil and gas lease offer is properly rejected where the applicant fails to date the simultaneous oil and gas drawing entry card.

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The drawing of an offer for a noncompetitive lease creates no vested rights in the offeror, the offeror's tender of advance rental payment notwithstanding.

Cissie A. Reinauer, 29 IBLA 295 (Mar. 30, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Raymond N. Joeckel et al., 30 IBLA 32 (Apr. 11, 1977)

Karen Cotter et al., 30 IBLA 88 (Apr. 27, 1977)

Duncan Miller, 30 IBLA 90 (Apr. 27, 1977)

William C. Kirkwood, 31 IBLA 178 (July 5, 1977)

Duncan Miller, 31 IBLA 349 (July 22, 1977)

Fred Goodstein, 32 IBLA 25 (Aug. 31, 1977)

Jerry Chambers, 33 IBLA 323 (Jan. 16, 1978)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Oct. 28, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Vernon C. Howell, 30 IBLA 70 (Apr. 18, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date.

Jary J. Hunnicutt et al., 30 IBLA 86 (Apr. 27, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A delay in the adjudication of an application by officers or employees of the Department cannot create rights in Federal property contrary to law.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a State prefix in the parcel number, the lease offer is properly rejected.

John P. Levycky, 30 IBLA 127 (May 12, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued pursuant to the simultaneous filing procedures where the drawing was held prior to the effective date of the rent increase, and leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Casey C. Jansen et al., 30 IBLA 134 (May 12, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued to successful offerors at simultaneous drawings held prior to the effective date of the rate increase.

Melvin R. Hobgood, 30 IBLA 163 (May 18, 1977)

The signature of the offeror on a simultaneous oil and gas lease offer entry card may be affixed by means of a rubber stamp if it is the intention of the offeror that it be his or her signature.

Use of a rubber-stamped facsimile of an offeror's signature on a simultaneous oil and gas lease entry card invites inquiry into whether the card was stamped by the offeror or, instead, by his agent.

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

D. E. Pack, 30 IBLA 166 (May 19, 1977)   84 I.D. 192

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to promulgate a Public Land Order closing an area of public lands to oil and gas leasing for the purpose of preserving and developing the potash deposits therein belonging to the United States, it is proper to reject oil and gas lease offers for such withdrawn lands.

AA Minerals Corp., 30 IBLA 259 (May 31, 1977)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a State prefix in the parcel number, the lease offer is properly rejected.

Where an applicant fails to include the State prefix of the parcel number on an oil and gas drawing entry card, he/she has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and such offer is properly rejected whether the defect is discovered before or after the drawing.

Improper issuance of a noncompetitive oil and gas lease in response to a defective drawing entry card in the simultaneous filing procedure does not foreclose the right of the second drawn applicant whose drawing entry card was complete when filed to a lease for the parcel named; the erroneously issued lease must be canceled, and upon cancellation, the second drawee must be awarded a lease to the parcel, all else being regular.

Gerald I. Christensen, Edward C. Green, 30 IBLA 283 (June 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn prior to the effective date of the increase.

Marie A. Piel et al., 30 IBLA 308 (June 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date.

Guy R. Willis, 30 IBLA 344 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

Wanda C. and William E. Scheidt, et al., 30 IBLA 346 (June 8, 1977)

William S. Schicktanz, 32 IBLA 20 (Aug. 31, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate applies to all leases issued after that date, regardless of the date the offer to lease or drawing entry card was filed.

Duncan Miller, 30 IBLA 350 (June 8, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offer was filed prior to the date of the regulation. The imposition of the increased rate is not discriminatory as it applies to all leases issued after a certain date.

Guy M. Willis, 30 IBLA 373 (June 10, 1977)

The filing of a noncompetitive oil and gas lease offer, prior to acceptance, does not create any right to a lease or legal interest which restricts the discretionary authority of the Secretary of the Interior over lease issuance. Thus, an amended regulation raising the lease rental charge may be applied to lease offers which have been previously filed but not accepted and such action is not violative of the Fifth Amendment.

Barbara A. Joeckel, 30 IBLA 376 (June 10, 1977)

Where an oil and gas lease offer is signed by an agent on behalf of the offeror, the regulations with respect to qualifications of lessees require evidence of the authority of the agent and separate statements by the offeror and the agent regarding the nature and extent of any interest the agent has in the lease. The same requirement applies where the offeror's facsimile signature is affixed on the offer by an agent. An offer must be rejected where this information is not filed.

The Bureau of Land Management (BLM) has a responsibility to issue noncompetitive oil and gas leases only to the first-qualified offeror. A rubber-stamped or other form of facsimile signature, unlike a handwritten signature, does not give rise to a presumption that it was personally executed by the offeror. The BLM may inquire of the circumstances under which the signature was stamped on the offer to determine whether compliance with 43 CFR 3102.6-1 was required.

Charlotte L. Thornton, William M. Weaver, Jr., Robert L. Smith, 31 IBLA 3 (June 15, 1977)

An oil and gas lease offer must be rejected as to lands applied for which are held in trust for Indians and are not available under the Mineral Leasing Act. Even though the minerals in these lands have been reserved to the United States, mineral development is not possible at this time because the language of the exchange act under which the lands were acquired requires further promulgation of special regulations by the Secretary as a condition precedent to such development.

Thomas D. Chace, 31 IBLA 13 (June 17, 1977)

Where the regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States, a simultaneously filed lease offer which is not accompanied by the required statement must be rejected, and the defect may not be "cured" by submission of the statement at a later time.

David F. Owen, 31 IBLA 24 (June 20, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The showings required by 43 CFR 3102.4-1 to qualify a corporation to receive an oil and gas lease are mandatory. An oil and gas lease offer by a corporation is properly rejected when it is signed by an officer who is neither authorized to act on behalf of the corporation by the corporate qualification statement on file with the Bureau of Land Management nor authorized to act by a statement accompanying the offer.

As a general rule, an applicant is not entitled to rely upon misinformation or erroneous advice given by departmental employees to acquire any rights in public lands not authorized by law. A corporation filing an oil and gas lease offer, signed by an officer not designated in accordance with 43 CFR 3102.4-1 as authorized to act on its behalf, cannot rely on the fact that the officer's signature was accepted by the Department on documents filed in unrelated matters to excuse its failure to provide the mandatory authorization.

An over-the-counter oil and gas lease offer, properly rejected because it failed to meet the requirements of the regulations, may be considered as having priority as of the date the defect is cured where the curative action was taken during an appeal from the rejection of the offer.

Emerald Oil Co., 31 IBLA 119 (June 24, 1977)

Reproduction of the franked postal drawing entry card is not authorized and offers filed on copies of such form must be rejected. An offer will not be rejected for this reason when an examination of several cards submitted by the same offerors fails to establish that the cards were reproductions.

The signature of the offeror on a simultaneous oil and gas lease offer entry card may be affixed by means of a rubber stamp if it is the intention of the offeror that it be his or her signature.

A BLM office need not presume that an applicant rather than an agent stamped a facsimile signature on a drawing entry card, and where no agent's statement has been submitted as required by 43 CFR 3102.6-1, a Bureau office may inquire as to whether the applicant's signature was imprinted at his request and whether he formulated the offer.

Ray H. Thames, 31 IBLA 167 (July 5, 1977)

A first-drawn simultaneous drawing entry card which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

Norcross Partners, 31 IBLA 181 (July 5, 1977)

Persons filing a joint oil and gas lease offer may properly use the address of a leasing service on their entry card.

Since the question of whether offerors for oil and gas leases have addresses other than that indicated on their entry card is irrelevant to the validity of their offer where the address of a leasing service is used on the entry card, the BLM need not attempt to discover whether offerors in fact have addresses other than that shown on their entry card.

Where the use of a facsimile signature on an oil and gas lease offer, considered in conjunction with other circumstances, raises questions concerning offeror's

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

compliance with 43 CFR 3102.6-1(a)(2), it is appropriate to remand the case to the proper BLM office for resolution.

Nadine M. Sanford, 31 IBLA 184 (July 5, 1977)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Curtis Wheeler, 31 IBLA 221 (July 7, 1977)

Where the United States owns only fractional mineral interest in the land, an offer filed before Sept. 30, 1976, for a simultaneous oil and gas lease drawing, must be rejected where it is not accompanied by a statement showing extent of offeror's ownership of operating rights in fractional mineral interest not owned by the United States.

Bruce T. Cameron, Carol Heller, 31 IBLA 234 (July 12, 1977)

Where a protest has been made against the validity of a drawing entry card (DEC) in the simultaneous oil and gas lease filing procedure, it is improper to issue a lease in response to the protested DEC before the protest is finally dismissed. The Board of Land Appeals, rather than a BLM State Office, has the authority to make final administrative determinations for the Department in matters relating to protests against oil and gas lease offers.

D. E. Pack, 31 IBLA 283 (July 22, 1977)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas offer filed for such land must be rejected.

Lands within a known geological structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected.

Curtis D. Wheeler, 31 IBLA 354 (July 25, 1977)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

Duncan Miller, 31 IBLA 371 (Aug. 4, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to over-the-counter filing procedures, even though the lease offers were submitted prior to the effective date of the increase.

Brad J. Hays, 31 IBLA 374 (Aug. 5, 1977)

OIL AND GAS LEASES--Continued

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Cecil C. Wall, 32 IBLA 27 (Aug. 31, 1977)

Where an inquiry by the BLM discloses that oil and gas lease applicants imprinted their own facsimile signatures on their drawing entry cards, there can be no question of the application of 43 CFR 3102.6-1(a)(2) since this regulation operates where an agent or attorney in fact affixes the applicant's signature on the applicant's behalf.

A simultaneously filed oil and gas lease entry card is not to be rejected for the reason that the applicant signed the card and the parcel number was entered thereon subsequently by the applicant's employee, since the applicant, in signing the card, certifies as to all the requirements stated as of the date entered thereon, and agrees to be bound to a lease if the offer is successful.

Evelyn Chambers and Jerry Chambers, 31 IBLA 381 (Aug. 10, 1977)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

When a leasing service holds an interest in a lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest and he is required by regulation, 43 CFR 3102.7, to provide the names of other interested parties, the nature and extent of their interest and the nature of the agreement between them not later than 15 days after the filing of the offer. Failure to file the required statements results in rejection of the offer.

Lola I. Doe, 31 IBLA 394 (Aug. 19, 1977)

Sidney H. Schreter, William E. Wood, Jr., 32 IBLA 148 (Sept. 12, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Altex Oil Corp., 32 IBLA 18 (Aug. 31, 1977)

Altex Oil Co., 32 IBLA 44 (Sept. 2, 1977)

Altex Oil Corp., 32 IBLA 390 (Nov. 7, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases

OIL AND GAS LEASES--Continued

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issued subsequent to that date pursuant to over-the-counter offers or pursuant to the simultaneous filing procedures, even though the offers or entry cards were filed with BLM prior to the specified date.

An oil and gas lease offer under the Mineral Leasing Act, *as amended*, 30 U.S.C. § 181 *et seq.* (1970), does not create a property right in the offeror but is merely a hope or expectation. It is not a "vested right," a present legal or equitable "title," "interest" or "ownership" or "perfected right," to come within the protection of the Fifth or Fourteenth Amendment.

Bureau of Land Management Instruction Memorandum No. 77-37 outlined a general policy for the assessment of additional rental on oil and gas lease offers pending when the rental rate was increased by regulation, but left to the discretion of the State Offices the particular implementing procedures. Procedures used by a State Office which may be different from other State Offices, but which do not prejudice the offerors' right to receive oil and gas leases if leases are issued on the lands applied for, are not arbitrary and capricious as to require reversal of the decisions assessing additional rental.

D. R. Gaither et al., 32 IBLA 106 (Sept. 12, 1977)

Where the regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for acquired land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States, a simultaneously filed oil and gas lease offer which is not accompanied by the required statement must be rejected.

Where a regulation requires that an acquired lands oil and gas lease offer be accompanied by a separate statement as to the offeror's ownership of operating rights to the fractional mineral interest not owned by the United States, and the offer is rejected for noncompliance therewith, the offeror's bald assertion that he filed such statement is insufficient to prove such a fact without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

W. J. Langley, 32 IBLA 118 (Sept. 12, 1977)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

John P. Errebo, Jr., 32 IBLA 191 (Sept. 15, 1977)

Where a drawing entry card sets out the names of two applicants but one applicant fails to sign the card, the card is not in compliance with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and the lease offer is properly rejected.

Fernando C. Santos, 32 IBLA 194 (Sept. 15, 1977)

OIL AND GAS LEASES--Continued

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Generally--Continued

The filing of an application for a noncompetitive oil and gas lease, prior to acceptance, does not create a right to a lease immune from application of a subsequently amended administrative regulation. An increased rental rate is properly applied to an oil and gas lease offer pending before the effective date of the rate change but which has not been accepted prior to that time.

Viola J. Kirkwood, 32 IBLA 199 (Sept. 16, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date. The filing of an application for a lease prior to its acceptance does not create a right to a lease which is immune from application of a subsequently amended administrative regulation, nor does administrative delay in the processing of the lease offer preclude proper application of such regulation.

Paul C. Kohlman, 32 IBLA 240 (Sept. 21, 1977)

A simultaneous oil and gas lease offer is properly rejected if it is unsigned or undated.

When a first-drawn oil and gas lease offer is disqualified because it is unsigned or undated, the Department's equitable adjudication authority may not be invoked to divest the first-*qualified* drawee of his preference right to a lease.

David L. Hansen, John B. Hurdle, John F. and Inez B. Cramer, 32 IBLA 272 (Sept. 27, 1977)

Increased per acre rental, as directed under Jan. 5, 1977, revision of 43 CFR 3103.3-2(a), is applicable to all noncompetitive oil and gas leases issued after Feb. 1, 1977, including leases for which offers, both simultaneous and over-the-counter, were filed prior to revision of the regulation.

Duncan Miller et al., 32 IBLA 269 (Sept. 27, 1977)

Where a check has been submitted with a drawing entry card in payment of the $10 filing fee for a simultaneous oil and gas lease offer, and the check is dishonored by the bank, the offeror loses his priority unless the refusal to honor the check was the result of a bank error, corroborated by the bank.

John Eldon Dean, 32 IBLA 336 (Oct. 16, 1977)

Jonathan T. Ames, 33 IBLA 1 (Nov. 14, 1977)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party and the statements of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

Verner E. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Where the Bureau of Land Management issued a decision notifying a successful lease offeror of the increased advanced rental rate from $.50 to $1 per acre as per the regulation change in 43 CFR 3103.3-2, effective Feb. 1, 1977, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board and upon our affirmation, appellant now will be given 15 days to comply with the original requirements before his offer is rejected.

Paul Landis, 32 IBLA 374 (Oct. 31, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to an over-the-counter offer filed prior to the specified date.

Dean W. Rowell, 33 IBLA 30 (Nov. 22, 1977)

Where the Bureau of Land Management issued a decision notifying a successful drawee in the simultaneous oil and gas filing program of the increased advance rental rate from 50 cents to $1 per acre pursuant to a regulation change effective Feb. 1, 1977, 43 CFR 3103.3-2, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board. Payment of the required increased rental during the appeal period is deemed timely and a lease may issue.

George Gabriel, 33 IBLA 44 (Nov. 25, 1977)

Where an applicant incorrectly uses the wrong abbreviation for the State prefix of the parcel number on an oil and gas drawing entry card, she has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and her offer is properly rejected.

Marcia P. Lane, 33 IBLA 68 (Dec. 5, 1977)

The Secretary of the Interior may in his discretion reject any offer to lease public lands for oil and gas upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. Where part of the lands applied for are in the Bonneville Salt Flats, and the Bureau of Land Management determines that oil and gas leasing activities are not compatible with the primary management

OIL AND GAS LEASES--Continued

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Generally--Continued

objective to prevent irreparable damage to a significant resource, rejection of the lease offers or the requirement of execution of surface occupancy stipulations will be affirmed.

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

Vern R. Jones et al., Andrew E. Bartley, 33 IBLA 74 (Dec. 6, 1977)

An unsigned and undated drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected, despite assertions of excusable neglect or inadvertence.

Edna M. McCree and Harry R. McCree, 33 IBLA 235 (Dec. 28, 1977)

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Charles E. Ricci, 33 IBLA 288 (Jan. 5, 1978)

Land included within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding.

Amerada Hess Corp., 33 IBLA 293 (Jan. 10, 1978)

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not been posted as available as prescribed by 43 CFR subpart 3112.

A junior oil and gas lease offer is properly rejected when the senior offer subsequently is accepted and the lease is properly issued.

A timely appeal from rejection of an oil and gas lease offer because of a determination of known geologic structure suspends the rejection pending decision by this Board, and where the Geological Survey rescinds the KGS determination as having been erroneously made during the pendency of the appeal, the status quo ante of land involved is restored.

Where land was omitted from an oil and gas lease only because of an erroneous KGS determination, and the applicant has preserved his priority by timely appealing the rejection, it is proper to amend such lease to include such omitted land when the Geological Survey rescinds its erroneous KGS determination.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

A simultaneously filed oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of corporate qualifications nor makes reference to a serial number of a record in which such statement had previously been filed, as required by 43 CFR 3102.4-1.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A simultaneous oil and gas lease offer is properly rejected when the date is omitted from the drawing card.

A simultaneous oil and gas lease offer is properly rejected where the drawing card is not signed. Where a corporation submits a drawing card which is not signed by a corporate officer whose authority to sign is established by the procedure set out in 43 CFR 3102.4-1, the card is not "signed" within the meaning of 43 CFR 3112.2-1(a), and its offer must accordingly be rejected. Placing the corporation's name in script on the signature line does not constitute "signing" the card.

Anchors and Holes, Inc., 33 IBLA 339 (Jan. 16, 1978)

Where a drawing entry card submitted in a simultaneous oil and gas lease filing has been signed by the applicant, its completion by a duly authorized agent, all else being regular, does not call into play other requirements of pertinent regulations.

Virginia A. Raposo, 33 IBLA 344 (Jan. 18, 1978)

Patricia P. Marks, 34 IBLA 384 (May 2, 1978)

Where an inquiry by BLM discloses that an oil and gas lease applicant personally signed his name on his drawing entry card, there can be no question of the application of 43 CFR 3102.6-1(a), since this regulation operates only where an agent or attorney in fact signs the card on his principal's behalf.

An oil and gas drawing entry card may not be rejected merely because it is signed by the applicant before the parcel number is entered on it by another.

Adam F. Zbilski, 34 IBLA 4 (Feb. 8, 1978)

Regulation 43 CFR 3108.2-1(c)(3), which provides that a new lease for lands covered by a lease terminated automatically for nonpayment of rental shall not be issued until 90 days from the date of termination does not preclude posting such lands to Notice of Lands Available to Oil and Gas Leasing, 43 CFR 3112.1-2, during the 90-day period.

Jack L. McClellan, Marton Majoros, 34 IBLA 53 (Feb. 16, 1978)

Where a drawing entry card submitted in a simultaneous oil and gas lease filing has been signed by the applicant, its completion by a duly authorized agent, including insertion of a current date, all else being regular, does not call into play other requirements of pertinent regulations.

Kenneth Ross, 34 IBLA 61 (Feb. 16, 1978)

Oil and gas lease offers may be rejected where legal title to the lands in issue is uncertain. It is not improper for BLM to refuse to suspend the offers pending determination of the title issue.

N L Industries, Inc., 34 IBLA 99 (Feb. 23, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A simultaneous oil and gas lease drawing entry card containing an incorrect parcel number is properly rejected and the filing fee is properly retained by the Bureau of Land Management.

Henry A. Alker, 34 IBLA 136 (Mar. 8, 1978)

A requirement to submit a "certified copy" of a private agreement is satisfied by the submission of a copy of the agreement with a statement that it is a copy of that agreement.

Where a successful drawee in a simultaneous oil and gas lease drawing, who is directed by a State Office to submit a copy of any agreement he may have with another person, submits a copy of an agreement which incorporates, by reference, a brochure issued by the leasing service with which he had an agreement, but not a copy of the brochure, he has not complied with the directive and his offer is properly rejected.

Ricky L. Gifford, 34 IBLA 160 (Mar. 10, 1978)

Where it is shown that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of the filing fee.

Charles F. Ricci (On Reconsideration), 34 IBLA 166 (Mar. 21, 1978)

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent are submitted along with his offer card.

Where an offeror and his agent filing service submit statements along with a drawing entry card, which statements indicate unequivocally that there is no agreement between them creating an interest in the agent, thus apparently obviating the need to submit details of the offeror/agent agreement per 43 CFR 3102.6-1, BLM, in its discretion, may either decline to inquire further into the details of the agreement or may request and examine a copy of the agreement to determine whether such an "interest" in the agent existed at the time the offer was filed.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and *not* an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Virginia L. Jones, 34 IBLA 168 (Mar. 21, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined by this Department to create an interest in the lease for the service, and the service files a waiver of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the waiver is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Alfred L. Easterday, 34 IBLA 195 (Mar. 22, 1978)

Strict compliance with 43 CFR 3112.2-1, which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent, is required. Where no date of signing appears on an entry card, the offer is properly rejected.

Jack L. Macdowell, 34 IBLA 202 (Mar. 22, 1978)

John G. Keane, 37 IBLA 364 (Nov. 2, 1978)

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer per 43 CFR 3112.5-2.

William H. Boehm, 34 IBLA 216 (Mar. 27, 1978)

A regulation, amended in a manner that benefits a pending application for an oil and gas lease, may be applied to the pending application in the absence of intervening rights or public interest.

Repeal of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property gives priority to an otherwise regular offer which would have had to be rejected under the former regulations, as of the effective date of the repeal, provided that no offers qualified under the former regulation have been received prior to repeal, and that the offer has not been rejected prior to repeal.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An entry card in a simultaneous oil and gas lease drawing need not be rejected where the card sets out in the parcel designation the complete name of the State in which the parcel is located instead of the abbreviation of the State name used as the State code prefix. All else being regular, such an entry card is fully executed.

Clayton Chessman, 34 IBLA 263 (Mar. 31, 1978)

Douglas Steele, 34 IBLA 344 (Apr. 26, 1978)

J. C. Davis, 35 IBLA 92 (May 12, 1978)

Regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them, or they should not be interpreted to deprive him of a preference right to a lease.

Bill J. Maddox, 34 IBLA 278 (Apr. 17, 1978)

A simultaneous oil and gas drawing entry card must be fully executed by the applicant, and when the State prefix to the parcel number is omitted, the lease offer is properly rejected.

Richard Wheeler, Jr., 34 IBLA 359 (May 1, 1978)

A successful drawee in a simultaneous oil and gas lease drawing will not be disqualified to receive a lease by reason of allegations to the effect that the winning drawing entry card was filed for such drawee by an agent and that the agent has failed to observe the registration requirements of the Securities Act of 1933.

John H. McGann, 35 IBLA 32 (May 8, 1978)

Offeror's failure to enter postal zip code of his address on entry card for simultaneous oil and gas lease drawing properly results in BLM's rejecting his offer. Such omission contradicts requirement in 43 CFR 3112.2-1(a) that entry card be "fully executed."

William E. DuKate, 35 IBLA 51 (May 9, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Tipperary Oil and Gas Corp., 35 IBLA 120 (May 15, 1978)

Where a successful drawee in a simultaneous oil and gas lease drawing, who is directed by a State Office to submit a copy of any agreement he may have with another person in regard to such drawing, submits a copy of an agreement which incorporates by reference a brochure issued by the leasing service with which he had an agreement, but not a copy of the brochure, he has not complied with the directive.

Neil Hirsch, Robertus C. Roos, 35 IBLA 125 (May 22, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

It is arbitrary and capricious for a BLM State Office to reject a drawing entry card, drawn with first priority, for the reason of trivial corrections on the card by means of a "white out" liquid which does not affect the appearance or feel of the card in any significant way and which corrections obviously were not intended to adversely affect the integrity of the drawing.

James L. Harden, 35 IBLA 128 (May 22, 1978)

An oil and gas offer describing land which cannot be encompassed within a 6-mile square is defective and must be rejected, and where a lease is issued for part of the land embraced in the offer it must be canceled as to that land which is embraced in a proper offer filed prior to the issuance of the lease in order that the statutory preference right of the party first making a proper offer may be honored.

Robert W. David, 35 IBLA 205 (May 26, 1978)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease erroneously canceled, because under 43 CFR 3112.1-1 land in canceled leases is subject to the filing of new noncompetitive lease offers only in accordance with simultaneous filing procedures.

A past incorrect application of the law in adjudication of oil and gas lease offers is no authorization for failure to follow regulations in the case of an offer currently under adjudication.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification may not be avoided by allegations that delivery was delayed by the postal service, as the rule is that the postal authorities are the agents of the sender in such cases.

Where BLM records show that the first-drawn applicant for an oil and gas lease paid his rental 1 day late, and is therefore disqualified, there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Where a first-drawn oil and gas applicant offers evidence to show that his first year's advance rental was mailed sufficiently in advance so that, even if delayed, it would have arrived within the prescribed time, a legal presumption is raised that the payment was timely delivered.

The filing or drawing of an oil and gas lease offer, even though it has first priority, creates no vested rights in the offeror which are constitutionally protected, and where such offer is rejected for any legally cognizable reason, it does not work a forefeiture of the offeror's interest, which amounts only to a hope or an expectation rather than a claim.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where BLM issues a decision requiring that an oil and gas offeror submit additional advance rental within 30 days, and the offeror files a timely appeal to this Board, the running of the 30 days is suspended. Following affirmation by this Board of BLM's decision, the offeror is properly given the entire 30 days within which to submit the additional rental.

An oil and gas offer which is accompanied by advance rental of $0.50 per acre may not be rejected as not including sufficient advance rental, per 43 CFR 3103.3-2, 3111.1-1(d) and (e)(1), if the regulation raising the rental to $1 is not in effect when the offer was filed.

Mobil Oil Corp., 35 IBLA 375 (June 23, 1978)
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An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, the burden is on a protestant attacking the validity of the offer to prove an accusation that there is an agreement giving the filing service an enforceable interest in the lease to be issued.

Clyde E. Frazier, 36 IBLA 141 (July 25, 1978)

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

A successful drawee in a simultaneous oil and gas lease drawing will not be disqualified to receive a lease by reason of unsubstantiated allegations to the effect that the winning drawing entry card was filed for such drawee by an agent and that the agent has failed to observe the registration requirements of the Securities Act of 1933.

Bruce E. Watkins, 36 IBLA 168 (July 31, 1978)

Where the official record of an oil and gas lease offer contains no indication either of when BLM received payment of first-year rental on the lease or of when BLM believes it received this payment, and where the only indication of when the payment was made is a photocopy, submitted on appeal, of a portion of an unidentified, undated receipt which does not bear either the offeror's name or the serial number of his offer or the control number of the document, and which is not included in the official record, BLM's decision rejecting the offer under 43 CFR 3112.4-1 for failure to make this payment within 15 days of the offeror's receipt of notice that the rental was due will be reversed.

Willis L. Lawton, 36 IBLA 178 (July 31, 1978)

Unsigned and undated drawing entry cards filed in the simultaneous oil and gas leasing drawings must be rejected. An oil and gas lease offer is not accepted by the United States until a lease is executed and signed by the appropriate officer.

S. Duff Kerr, 36 IBLA 199 (Aug. 3, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

It is proper to reject a drawing entry card lease offer, given first priority at a drawing, where the name of the offeror is affixed to the card by means of an address label, instead of being inserted in the appropriate spaces of the card in this order: last name, first name, middle initial.

Irving B. Brick, 36 IBLA 235 (Aug. 8, 1978)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and where the applicant omits from her address, the State and zip code, the lease offer is properly rejected.

Rita D. Vick, 36 IBLA 275 (Aug. 21, 1978)

A simultaneous oil and gas drawing entry card must be fully executed by the applicants and when they omit their address, the lease offer is properly rejected notwithstanding assertions of excusable neglect or inadvertence.

Burton A. Rykken et al., 36 IBLA 277 (Aug. 21, 1978)

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer is in an expired or terminated lease and has not been posted as available as prescribed by 43 CFR Subpart 3112.

Robert P. Marshall, 36 IBLA 279 (Aug. 21, 1978)

Unsigned and undated drawing entry cards filed in the simultaneous oil and gas leasing drawings must be rejected. The calling out of the No. 1 drawee's name does not constitute acceptance of the offer. Acceptance of the offer cannot accrue until the lease itself has been executed by the appropriate official of the Government.

S. Duff Kerr, 36 IBLA 302 (Aug. 21, 1978)

Darrell J. Sekin, 40 IBLA 156 (Mar. 30, 1979)

Where a high bid was timely filed prior to the deadline for bids, but was subsequently midlaid by BLM and was not relocated until after another lower bid was declared high, BLM properly accepted the true high bid and retracted its declaration regarding the lower bid.

Jack M. Chodar, 36 IBLA 324 (Aug. 23, 1978)

A simultaneously filed oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of qualifications nor makes reference to a serial number of a record in which such statement has previously been filed, as required by 43 CFR 3102.4-1.

WZL Investment Corp., 36 IBLA 355 (Aug. 31, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer is in an expired or terminated lease and has not been posted as available, as prescribed by 43 CFR Subpart 3112.

An oil and gas lease offer for acquired lands will be rejected unless all the copies of the application required by the regulation, 43 CFR 3111.1-2, are filed.

Where an oil and gas lease offer for acquired lands is filed for less than the entire tract acquired by the United States, the regulations in 43 CFR 3102.2-3(b)(1) require that the application must describe the land by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land.

Robert M. Enfield, 36 IBLA 383 (Aug. 31, 1978)

Where land was previously included in an oil and gas lease and thereafter listed for the simultaneous filing of offers pursuant to 43 CFR 3112, and two offers were filed, both of which were rejected, the land is not thereafter open to the filing of over-the-counter offers to lease, but must again be posted for simultaneous filing.

L. A. Walstrom, Jr., 36 IBLA 397 (Sept. 5, 1978)

Appellant's charges in respect of filing of registration statements for compliance with securities laws go to question of relationships between filing service companies and their investors, and as such, are properly for consideration by Securities and Exchange Commission. Where they do not indicate noncompliance with oil and gas leasing statutes, regulations, and decisions of this Department, such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

Dexter E. Spalding, 37 IBLA 4 (Sept. 6, 1978)

It is incorrect for BLM to reject an oil and gas lease offer in the simultaneous filing program for failure of the applicant to submit a copy of her agreement with a filing service where there is no evidence that such a written agreement exists. Where a DEC submitted in the simultaneous oil and gas leasing program has been signed by the applicant, and all else is regular, no other requirement of the regulations are called into play.

Bebe Lee Durden, 37 IBLA 15 (Sept. 8, 1978)

The simultaneous drawing system presupposes that each properly filed offer be afforded the same opportunity for priority consideration. This requires that when drawing entry cards are improperly omitted from a drawing, the first drawing be considered as void, and priorities established at a second drawing, in which all entry cards are included, shall control consideration for the oil and gas lease.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39 (Sept. 18, 1978)
85 I.D. 380

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by corporate qualification papers nor by any reference to a serial number where such information is to be found, as required by 43 CFR 3102.4-1.

Where a simultaneous drawing entry card culminates in lease issuance and it is subsequently ascertained that the serial number represented by the offeror to contain the corporate qualification papers, relates to "Christiansen Oil and Gas, Inc.," rather than to the offeror-lessee, Christiansen Oil, Inc., the lease is properly canceled, since the offeror was not the first-qualified offeror.

Christiansen Oil, Inc., 37 IBLA 52 (Sept. 18, 1978)

A first-drawn simultaneous oil and gas lease offer filed by an association which is not accompanied by evidence of the qualifications of the association to hold an oil and gas lease or which does not refer to the case record in which the evidence had previously been filed, as required by 43 CFR 3102.3-1(a), must be rejected.

A first-drawn simultaneous oil and gas lease offer filed by a partnership which is signed by one agent where the partnership agreement authorizes two or more agents, jointly, to file simultaneous oil and gas lease offers, is not signed by an "authorized" agent, as required by 43 CFR 3112.2-1(a), and must be rejected. A grant of authority to "A and B," without more, will be deemed to create a joint agency.

SID Partnership, 37 IBLA 165 (Oct. 10, 1978)

An offeror's use of a leasing service's address on the drawing entry card for a simultaneous oil and gas lease drawing does not disqualify the offer, all else being regular, nor does it call into play other requirements of pertinent regulations.

Lisa Heymann, 37 IBLA 170 (Oct. 10, 1978)

When a married woman signs her name, "Mrs. Hal McCarthy," as offeror on a drawing entry card oil and gas lease offer, and prints her full name "Geraldine M. McCarthy" on the face of the card, the card may not be rejected because she violated no regulation by signing the offer in that manner, and she followed the instructions on the face of the card by giving her first name and initial.

Geraldine M. McCarthy, 37 IBLA 323 (Oct. 25, 1978)

While the Department of the Interior does not require oil and gas lease drawing entry cards to be signed and dated at the same time, the signor does attest to the truth of the statements on the card as of the date of the card and is bound by and to its terms.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978) 85 I.D. 403

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A final Departmental appellate decision construing a regulation will be given immediate effect, and will not be applied with prospective effect only, unless the decision alters materially the interpretation given the regulation by earlier Departmental decisions or official published opinions, and unless the equitable benefit of the decision is not outweighed by ill effects of allowing a benefit in derogation of the regulation.

E. E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978) 85 I.D. 408

Gertrude B. D'Amico, 39 IBLA 68 (Jan. 17, 1979)

Where an oil and gas lease drawing entry card contains the names of other parties in interest and the separate statement of interest required to be filed is not signed by the offeror as required by 43 CFR 3102.7, the offer is properly rejected.

Elizabeth Fagedas, 38 IBLA 130 (Nov. 22, 1978)

A drawing entry card which is not dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected, notwithstanding an allegation that the date of signing might have been deduced from a check accompanying the offer or from the postmark of the envelope in which the offer was submitted.

Theodore H. Fohn, 38 IBLA 135 (Nov. 29, 1978)

Donald Miller, 40 IBLA 193 (Apr. 5, 1979)

Donald Miller, 43 IBLA 4 (Sept. 11, 1979)

There is no prohibition against an oil and gas lease offeror's using an address which is commonly used by other offerors.

A general allegation that an oil and gas lease offeror has not complied with securities laws is not proper for consideration by the Department of the Interior, which has not been delegated the responsibility for enforcement of securities laws, absent a showing that his activities, including the filing of lease offers, have been judicially enjoined.

Johnnie E. Gryder, 38 IBLA 146 (Dec. 5, 1978)

Where a drawing entry card submitted in a simultaneous oil and gas lease filing has been signed by the applicant, its completion by a duly authorized agent, all else being regular, does not call into play other requirements of pertinent regulations.

A protest filed by the No. 2 drawee against the issuance of a lease to the No. 1 drawee is properly dismissed where the only grounds asserted for rejecting the offer are that offeror used an address other than his own and that an agent or attorney-in-fact completed the drawing entry card and failed to submit the statements required in 43 CFR 3102.6-1, and it has been shown that the signature on the card was made by the offeror.

Cecil E. Woodlock, Anthony J. Visco, 38 IBLA 186 (Dec. 6, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The use of a post office box number as an address is not barred by the oil and gas leasing regulations governing applications or by the Rules of Practice of the Department.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

Where the official record of an oil and gas lease contains nothing either showing that an oil and gas lease applicant's $10 filing fee was included in a check which was dishonored by the drawee bank, or rebutting the applicant's assertion that his filing fee was instead included in another check processed by BLM without incident, BLM's decision to cancel a lease issued pursuant to this offer because no filing fee was paid as required by 43 CFR 3103.2-1(a) will not be sustained for that reason.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

Where an offer is drawn No. 1 for a tract consisting of 39.97 acres, BLM requests payment specifically of $40 advance rental, and the offeror remits $39.97 within the 15-day period spelled out in 43 CFR 3112.4-1, the submittal of $39.97 does not constitute satisfactory payment within the ambit of that regulation.

Milton Knoll, 38 IBLA 319 (Dec. 19, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after Feb. 1977, the increased rate is applicable to leases issued subsequent to that date where the over-the-counter offer was filed prior to effective date of the regulation.

An over-the-counter oil and gas lease offer, properly rejected because of a failure to meet the requirements of the regulations, but which rejection did not become final because an appeal was timely filed, may be considered as having priority as of the date the defect was cured.

Phillips Petroleum Co., 38 IBLA 344 (Dec. 22, 1978)

Lands or minerals in lands were not "withdrawn" and "restored from a withdrawal" as those terms are used in the public land laws merely because an erroneous title opinion that the minerals are not owned by the United States is corrected to reflect that they are owned by the United States, and the oil and gas simultaneous filing procedures are applicable where those minerals were in a lease which expired before the correction of the status of the minerals was made.

Regardless of whether lands have been withdrawn from leasing and later restored, or were not withdrawn, an over-the-counter oil and gas lease offer must be rejected where the land involved was formerly embraced in an oil and gas lease which has expired by operation of law and has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112.

David A. Provinse, 38 IBLA 347 (Dec. 22, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where an offeror for a noncompetitive, over-the-counter oil and gas lease certifies that he is a United States citizen, his failure to disclose whether he is a native-born or naturalized citizen will not support rejection of his offer where an offeror for a noncompetitive, simultaneous oil and gas lease is not required to disclose similar information.

Jas. O. Greene, Jr., 39 IBLA 43 (Jan. 16, 1979)

A noncompetitive oil and gas lease offer for acquired lands, filed "over-the-counter," is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, where the balance of the rental is tendered with the notice of appeal, the offer may be reinstated with priority from the date the deficiency was corrected.

George S. Swan, 39 IBLA 47 (Jan. 16, 1979)

It is proper for the Bureau of Land Management to refuse to accept a filing fee check accompanying drawing entry cards for simultaneous oil and gas lease offers where the check bears the figure amount of $110, the correct amount due, and the typewritten amount of "One hundred eleven and no/100."

Bertram F. Rudolph, Jr., 39 IBLA 167 (Jan. 30, 1979)

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer.

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Lee S. Bielski, 39 IBLA 211 (Feb. 8, 1979) 86 I.D. 80

Under 30 U.S.C. § 226 (1976), the Department has no authority to issue an oil and gas lease to other than the first-qualified applicant, and if an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been timely filed.

Where a rubber stamp is used to imprint an applicant's signature, and where no agent's statement has been submitted under 43 CFR 3102.6-1, a State Office may take appropriate action to establish whether the applicant's signature was imprinted at his request and whether he formulated the offer.

William I. Egger, Jr., 39 IBLA 332 (Feb. 27, 1979)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Jack J. Bender, 40 IBLA 26 (Mar. 9, 1979)

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer. A leasing service bound by a "put option" does not have a hidden interest in the offer and does not violate 43 CFR 3102.7 by failing to disclose this put option or 43 CFR 3112.5-2 by filing offers for more than one client on a parcel.

A successful drawee in a simultaneous oil and gas lease drawing will not be disqualified to receive a lease because of an allegation that his leasing service has failed to observe the registration requirements of the Securities Act of 1933.

D. E. Pack, 40 IBLA 45 (Mar. 15, 1979)

Where a drawing entry card is submitted in a simultaneous oil and gas lease drawing and signed by multiple offerors, the offer is properly rejected if even a single offeror fails to enter the date of his signature on the drawing entry card.

The requirement set forth in 43 CFR 3112.2-1(a) (1977) that a drawing entry card be fully executed is not vague or unclear. Hence, a DEC signed by multiple offerors is properly rejected if even a single offeror fails to enter the date on the drawing entry card.

The date of each signature on a drawing entry card is important, because it shows that on that particular date, the offerors, by their respective signatures, certify, as to each, all the statements made on the card.

Thomas R. Flickinger, William S. Flickinger, et al., 40 IBLA 53 (Mar. 16, 1979)

An entry card in a simultaneous oil and gas lease drawing need not be rejected under 43 CFR 3112.2-1(a) where the State prefix of the parcel number is placed on the card immediately below the boxes provided for designation of the parcel number.

L. Alice Collister, 40 IBLA 71 (Mar. 16, 1979)

When an applicant for a noncompetitive oil and gas lease is requested to provide additional information for the adjudication of his drawing entry card offer, the offer is properly rejected where the evidence provided is illegible, and applicant was notified of the illegibility but responded by sending more illegible evidence.

Richard P. Lewis, 40 IBLA 100 (Mar. 27, 1979)

A drawing entry card in a simultaneous oil and gas lease filing need not be rejected where the card sets out as part of the parcel designation the complete name of the State in which the parcel is located instead of the abbreviated State code prefix.

Ed Pendleton, 40 IBLA 103 (Mar. 27, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A noncompetitive oil and gas lease issued for lands which, at the time of the lease application, had been posted erroneously as available for leasing but were then included in a prior lease, will be allowed to continue in effect where the first lease expired before the second lease issued and no questions of public policy or third party rights are contravened by the lease issuance.

Reed Gilmore, 40 IBLA 139 (Mar. 29, 1979)

In cases raising the question whether regulations should be interpreted to the detriment of persons seeking oil and gas leases, the standard to be applied is whether the regulations are so clear that there can be no basis for the applicant's noncompliance. If there is doubt as to their meaning and intent, such doubt should be resolved in applicant's favor.

Robert B. Brantley, 40 IBLA 215 (Apr. 10, 1979)

The essential requirement of the simultaneous oil and gas leasing system is that all properly filed offers be afforded equal opportunity to obtain a lease. Where a system effectively excludes a lease offer from consideration, such a system is arbitrary and capricious.

Milton C. Feinberg, Benson J. Lamp (On Reconsideration), 40 IBLA 222 (Apr. 11, 1979) 86 I.D. 234

Where a drawing entry card is submitted in a simultaneous oil and gas lease drawing and signed by multiple offerors, the offer is properly rejected if even a single offeror fails to enter the date of his signature on the drawing entry card.

The requirement set forth in 43 CFR 3112.2-1(a) that a drawing entry card be fully executed is not vague or unclear. Hence, a DEC signed by multiple offerors is properly rejected if even a single offeror fails to enter the date on the drawing entry card.

Pamela M. Kay, Henry H. Greer, Gregory Montgomery, Franklin J. Sands, 40 IBLA 240 (Apr. 16, 1979)

A simultaneously filed oil and gas lease offer by a guardian is properly rejected where the offer is neither accompanied by the statements required by 43 CFR 3102.5-1, nor makes reference to the serial number of a record in which such statements have previously been filed.

Charles J. King, 40 IBLA 276 (Apr. 18, 1979)

The fact that the addresses of an oil and gas lease offeror and a filing service are identical does not disqualify the offer or afford the offeror or filing service a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

Where there is no evidence in the record that the offeror with first priority in a simultaneous oil and gas lease drawing is not the sole party in interest, a protest alleging an interest in a filing service may properly be dismissed.

Charges that an oil and gas lease filing service has not complied with the Securities Act of 1933 are properly raised before the Securities and Exchange Commission rather than the Department of the Interior.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

which has not been delegated responsibility for enforcement of securities laws.

Joseph J. O'Keefe, 40 IBLA 378 (May 14, 1979)

When an individual files an oil and gas lease offer through a leasing service under a contractual agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service a commission according to a set schedule on any sale plus a percentage of any royalties, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

A purported disclaimer by a leasing service of its interests in its clients' offers which is filed with BLM prior to the filing of these offers, but which, by its own terms, does not apply to the interests held by the service in these offers, is ineffectual and does not erase these interests. This disclaimer is also ineffectual as a matter of law even as to a client's offer to which it does apply, where it is unsupported by consideration and where it is not communicated to the client, as it may be retracted by the service. The service's interests in these offers therefore remain extant as of the filing of its clients' offers, notwithstanding the purported disclaimer, and where the existence of its interests is not disclosed on the offer cards as required by 43 CFR 3102.7, BLM properly rejects the offers.

The Government is not estopped from rejecting oil and gas lease offers because the offerors' leasing agent alleges that he relied on a representation by officers of BLM that his disclaimer of his interest in the offer was valid and therefore failed to amend his service agreement with his clients to remove the interest-creating provision, where it appears that BLM did not in fact so represent.

Frederick W. Lowey et al., 40 IBLA 381 (May 14, 1979)

The failure of the BLM officer to follow the procedure set out in a Secretarial Order requiring all offers, prior to issuance of a lease, to be sent to Geological Survey for a determination of whether the lands are within a known geologic structure, renders the signing of the lease unauthorized, and thus not binding on the Secretary.

United States v. William T. Alexander (On Court Remand), 41 IBLA 1 (May 21, 1979)

Where separate statements of interest are required pursuant to 43 CFR 3102.6-1(a)(2) (1977), this Board must affirm the dismissal of a protest against the issuance of an oil and gas lease which is premised on the protestant's contention that the statement of the offeror must bear his original, holographic signature.

Although a lease offer may not be rejected solely because an agent affixed the offeror's facsimile signature to the offeror's separate statement, this does not prevent BLM from requiring that the offeror personally verify the information contained therein and provide whatever supplemental information may reasonably be required. A private agent may not interpose himself between a lease applicant and the Government so as to mask the identity of the applicant and prevent direct contact by Federal officials who are properly concerned.

W. E. Gilmore, 41 IBLA 25 (May 29, 1979)

An oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of corporate qualifications nor makes reference to a proper serial number of a record in which such statement had previously been filed.

Where an over-the-counter noncompetitive oil and gas lease offer is filed by a corporation unaccompanied by a statement of its qualifications or a reference by serial number to the record in which it has been filed, and such defect is remedied prior to the filing of any junior offer, the first offer may be considered with priority as of the date the curative data is filed.

BL Industries, Inc., 41 IBLA 30 (May 29, 1979)

It is not proper to reject a drawing entry card oil and gas lease offer solely because an agent affixed the offeror's facsimile signature to both the DEC and to the offeror's separate statement required by 43 CFR 3102.6-1, as BLM may require that the offeror personally verify the information contained in the offer and in the statement, and provide whatever supplemental information that BLM may reasonably require.

Where a drawing entry card is submitted in a simultaneous oil and gas lease drawing and is signed by multiple offerors, the offer is properly rejected if even a single offeror fails to enter the date of his signature on the drawing entry card.

Robert E. Coen et al., 41 IBLA 55 (May 31, 1979)

Strict compliance with 43 CFR 3112.2-1 which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent is required.

A simultaneous oil and gas lease offer is properly rejected where the State prefix to the parcel number on an oil and gas drawing entry card is omitted.

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not dated.

C. B. Coster Gerard, 41 IBLA 74 (May 31, 1979)

Oil and gas offers, filed for lands withdrawn by PLO No. 5418, must be rejected. The order was issued under the authority of the Pickett Act, 43 U.S.C. §§ 141-142 (1970), repealed by FLPMA, and the order was not arbitrary, capricious, or an abuse of discretion.

Bristol Bay Native Corp., 41 IBLA 85 (June 4, 1979)

Strict compliance with 43 CFR 3112.2-1, which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent, is required. Where no date of signing appears on an entry card, the offer is properly rejected.

The burden of signing and fully executing a drawing entry card rests on the applicant. Reliance on instructions provided by a non-governmental filing

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

service does not excuse the failure to fully execute a card.

Walter B. Moore, Jr., 41 IBLA 95 (June 4, 1979)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification, stemming from failure to pay timely, will not be avoided by allegations that payment was mailed far enough in advance to arrive at BLM timely.

American Petrofina Co. of Texas, 41 IBLA 126 (June 13, 1979)

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent, such statements bearing a facsimile signature, are submitted along with his offer card.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b). A leasing service, which files a simultaneous noncompetitive oil and gas lease offer drawing entry card on behalf of its client, bound by a "put option" does not have a hidden interest in the offer and does not violate 43 CFR 3102.7 by failing to disclose this put option or 43 CFR 3112.5-2 by filing offers for more than one client on a parcel.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to present evidence of an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

Jack Mask, 41 IBLA 147 (June 18, 1979)

There is no prohibition against an oil and gas lease offeror's using an address which is commonly used by other offerors.

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent, such statements bearing a facsimile signature, are submitted along with his offer card.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b). A leasing service, which files a simultaneous noncompetitive oil and gas lease offer drawing entry card on behalf of its client, bound by a "put option" does not have a hidden interest in the offer and does not violate 43 CFR 3102.7 by failing to disclose this put option or 43 CFR 3112.5-2 by filing offers for more than one client on a parcel.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to present evidence of an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

Kelley Everette, 41 IBLA 155 (June 18, 1979)

A decision by BLM rejecting a noncompetitive oil and gas lease drawing entry card offer because someone other than the offeror affixed a facsimile of the offeror's signature on the card and agency statements were not filed as required by 43 CFR 3102.6-1 will be vacated where BLM bases its finding to this effect on a statement made by the offeror 6 months previously concerning the preparation of other, earlier offers, and where the offeror alleges on appeal that she actually affixed the facsimile herself on the offer in question.

Miriam Keizman (Harper), 41 IBLA 166 (June 18, 1979)

The fact that the addresses of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

Where there is no evidence of any violation of the regulations in the record, the burden is on the protestant to submit competent evidence of an accusation that there is an agreement giving a filing service an enforceable interest in the lease, absent which the protest is properly rejected. Allegations that there was a contract between the offeror and a filing service in which the filing service withholds an overriding royalty interest from the offeror and participates in the proceeds, without evidence, is not sufficient to show that the offeror was not a sole party in interest.

Where the purchaser of an oil and gas lease asserts that he purchased the lease from the offeror whose drawing entry card was drawn with first priority, for cash consideration without knowledge of any irregularities or violation of the regulations, he is considered to be a bona fide purchaser, and his lease is not subject to cancellation unless prima facie evidence is presented to the contrary.

J. Theodore Ellis, E. B. Pack, 41 IBLA 231 (June 27, 1979)

Where oil and gas lease offerors enclose agency statements with their drawing entry cards, which statements are clearly intended to, and appear to, apply to their offers, their cards are fully executed notwithstanding their failure to note on the face of the cards that the agency statements are enclosed, as nothing in the regulations or on the card directs an offeror to do so.

Nothing in the regulations requires an agency statement submitted under 43 CFR 3102.6-1(a) to be dated. Rather, the statement is an adjunct to the drawing entry card and is considered dated as of the signing and dating of the card.

An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed. Rather, such statements may be submitted over facsimile signatures.

Frederick T. Peters et al., 41 IBLA 262 (June 28, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

It is proper to reject a drawing entry card lease offer, given first priority at a drawing, where the name of the offeror is affixed to the card first name, middle initial, last name, not in the appropriate spaces, by means of a rubber stamp, instead of being inserted in the appropriate spaces of the card in this order: last name, first name, middle initial.

Gordon N. Blair, 41 IBLA 288 (June 28, 1979)

Not all persons may be qualified to be lessees. Signing and dating the entry card constitute certification by the offeror of his qualifications as of a date certain.

As used in 43 CFR 3112.2-1, the term "fully executed" means that the applicant must, in order to render the entry card a valid and complete offer to lease, supply the information requested thereon, including the date.

An interpretative rule is a clarification or explanation of an *existing* regulation, rather than a substantive modification thereof or the adoption of a new regulation.

Harry A. Zuckerman et al., 41 IBLA 372 (July 23, 1979)

An offeror for oil and gas lease may withdraw his offer at any time prior to the drawing. However, the filing fee is retained as a service charge irrespective of the outcome of the drawing.

Don C. Bell II (Trustee), 42 IBLA 21 (July 25, 1979)

Where the rental payment accompanying a noncompetitive oil and gas lease offer for acquired lands, filed over-the-counter, is deficient by more than 10 percent due to an increase in the rental rate subsequent to the filing of the offer, and Bureau of Land Management requests submission of the deficient rental within 30 days, BLM may properly reject the lease offer when the additional rental is not submitted within the 30 days.

Where Bureau of Land Management requests within 30 days the execution of special stipulations prepared by the Forest Service for acquired lands embraced in a noncompetitive oil and gas lease offer, filed over-the-counter, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days.

Where Bureau of Land Management requests within 30 days either (1) submission of a statement that an over-the-counter offeror for a noncompetitive oil and gas lease of acquired lands is not a partnership or (2) compliance with 43 CFR 3102.3-1 if it is a partnership, BLM may properly reject the lease offer when the offeror fails to act in either manner within the 30 days.

Hansen Brothers, 42 IBLA 40 (July 31, 1979)

An oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of corporate qualifications nor makes reference to a proper serial number of a record in which such statement had previously been filed.

Resource Exploration & Mining, Inc., 42 IBLA 63 (Aug. 2, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where a protestant against the issuance of leases, for oil and gas presents evidence demonstrating the existence of a written partnership between joint offers, and the offerors have not complied with the regulations requiring certain showings of partnerships, the offers cannot be honored.

American Quasar Petroleum Co., 42 IBLA 243 (Aug. 22, 1979)

43 CFR 3112.2-1 requires that simultaneous oil and gas drawing entry cards (DEC's) be "signed and fully executed" by the applicant or his agent which includes identifying the leasing units on the DEC's by correct parcel number. Strict compliance with the regulation is necessary and offers will be rejected where the applicant omits leading zeros from the parcel numbers on his DEC's.

Bertram E. Rudolph, Jr., 42 IBLA 310 (Aug. 29, 1979)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is $1,955, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for $1,954 within the time required, but fails to submit the $1 deficiency within the allowed time.

C. Panos, 42 IBLA 326 (Aug. 30, 1979)

A drawing entry card which is not dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected.

Donald E. Monington, 42 IBLA 380 (Sept. 11, 1979)

Where BLM's decision to reject a noncompetitive lease offer is based upon a report that the findings and conclusions contained in the Management Framework Plan (MFP) for the area show that acceptance of the offer would not be in the public interest because the lease would threaten valuable wildlife, archaeological, paleontological, scenic, and recreation values, and it is subsequently revealed that the report relied upon misstated the contents of the MFP, which actually made provision for mineral leasing subject to certain protective stipulations, the decision will be reversed and remanded with instructions to issue the lease with appropriate and reasonable stipulations.

James O. Breene, Jr. (On Reconsideration), 42 IBLA 355 (Sept. 11, 1979)

A decision rejecting an oil and gas lease offer because it would result in undue degradation of the environment will be set aside where the record does not clearly support the conclusion reached by BLM.

John M. Ickfrom, 43 IBLA 67 (Sept. 19, 1979)

Where the record does not show and it does not appear that a signature on a drawing entry card is a facsimile, but rather that it is the genuine handwritten signature of the offeror, BLM's decision stating that it is a facsimile and requesting more information about the circumstances surrounding its being affixed will be

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

vacated, as the requirements of 43 CFR 3102.6-1(a)(2) do not apply.

Hurley Gregory, 43 IBLA 82 (Sept. 19, 1979)

A simultaneously filed drawing entry card which is first drawn is properly rejected where the corporate offeror has improperly referred to the serial number where its statement of corporate qualifications was on file by omitting the letter prefix which showed which State Office had custody of the prior-filed statement of qualifications.

BLM personnel may not attempt to "correct," complete, or interpret entries on oil and gas lease offer application forms in such a way as to perfect an otherwise unacceptable application, nor may an applicant "cure" a defect on his drawing entry card by the submission of supplemental information after the drawing.

Resources Exploration & Mining, Inc. (On Reconsideration), 43 IBLA 89 (Sept. 19, 1979)

It is not proper to reject a drawing entry card oil and gas lease offer solely because an agent affixed the offeror's facsimile signature to both the DEC and to the offeror's separate statement required by 43 CFR 3102.6-1, as BLM may require that the offeror personally verify the information contained in the offer and in the statement, and provide whatever supplemental information that BLM may reasonably request. An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed.

Frances B. Bunn et al., 43 IBLA 242 (Oct. 10, 1979)

Oil and gas lease offerors are advised to refer to accompanying attachments on their drawing entry cards. However, where neither the regulations nor the instructions on the drawing entry card require that the card refer to the statements required by 43 CFR 3102.6-1, a noncompetitive oil and gas lease offer cannot be rejected for failure to do so, where such statements were actually submitted with the card.

Rharic Associates, 43 IBLA 317 (Oct. 22, 1979)

Brooks Griggs, 44 IBLA 185 (Nov. 30, 1979)

An offeror's use of a leasing service address on a drawing entry card, of itself, does not disqualify the offer.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to present competent evidence supporting the accusation that there is an agreement giving the agent an enforceable interest in the lease to be issued. In absence of such evidence, the protest is properly rejected.

Alice M. Hardy, 44 IBLA 5 (Nov. 6, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

When, following a drawing of simultaneously filed oil and gas lease offers, BLM notifies the first-drawn offeror to submit the first year's rental, that payment must be received by the proper office within the prescribed 15 days. An unsigned check, though received timely, does not constitute acceptable payment and is properly returned by BLM to the offeror. Where the offeror does not thereafter submit acceptable payment within the 15 days, BLM properly disqualifies the lease offer.

Delay caused by or attributable to the U.S. Postal Service is not sufficient to excuse late payment of rental except where reinstatement of a lease is at issue under 30 U.S.C. § 188(c) (1976). When BLM returns unacceptable payment to the offeror, a charge that delay in the return of the payment by the Postal Service caused his or her subsequent late rental payment is also an insufficient excuse absent evidence that the Postal Service acted improperly. There is a legal presumption of regularity which supports the official acts of public officers, and in the absence of clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Gary Milske, 44 IBLA 21 (Nov. 6, 1979)

In the absence of a regulatory requirement, it is not proper to reject a drawing entry card oil and gas lease offer solely because an agent afixed the offeror's facsimile signature to the DEC and the separate statements of the offeror and the agent submitted in satisfaction of 43 CFR 3102.6-1 are machine copies, as BLM may require that the offeror personally verify the information contained in the offer and the statement, and provide whatever supplemental information that BLM may reasonably request. An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed.

Nothing in the regulations requires an agency statement submitted under 43 CFR 3102.6-1(a) to be dated. The statement is an adjunct to the drawing entry card and is considered dated as of the signing and dating of the card.

Lewis M. Peters, 44 IBLA 35 (Nov. 6, 1979)

The regulations pertaining to the qualifications of an association as an oil and gas lease offeror (43 CFR 3102.3-1) requires, *inter alia*, separate statements setting forth citizenship and holdings only if there are members who own or control more than 10 percent of such association. If there are no members owning more than 10 percent, such statements need not be furnished.

Patrick Petroleum Co., 44 IBLA 36 (Nov. 6, 1979)

Lands which were acquired for development of their uranium deposits are not subject to oil and gas leasing under the Mineral Leasing Act for Acquired Lands.

Esdras K. Hartley, 44 IBLA 66 (Nov. 20, 1979)

Under the Departmental regulations an offeror in a simultaneous oil and gas lease drawing must sign a statement that he is the sole party in interest, or, if not, submit the statement required by 43 CFR 3102.7. Failure to comply with the regulation requires rejection of the lease offer.

H. J. Enevoldsen, 44 IBLA 70 (Nov. 20, 1979)
86 I.D. 643

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Oil and gas offers should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

David H. Yates, 44 IBLA 121 (Nov. 27, 1979)

Where a successful drawee in a simultaneous oil and gas lease drawing, who is directed by BLM to submit a copy of any agreement she may have with another person concerning the lease offer, submits a copy of an agreement which incorporates by reference a brochure issued by the leasing service with which she had an agreement, but not a copy of the brochure, she has not fully complied with the directive, but may be granted an opportunity to submit the brochure where no specific request for it had previously been made by BLM and the need to include it may not have been apparent.

Martha E. Merrill, 44 IBLA 136 (Nov. 30, 1979)

When an offeror prints his name on the front of a drawing entry card oil and gas lease offer as "Maddox, Robert J.," and signs his name on the back of the card as "J. Robert Maddox," his usual manner of signing, the card may not be rejected because he violated no regulation by signing the offer in that manner, and he properly followed instructions on the face of the card by giving his last name first, then his first name and initial.

Robert J. Maddox, 44 IBLA 178 (Nov. 30, 1979)

Where a noncompetitive oil and gas lease is rejected on the ground that the land lies within an undefined known geologic structure, but the Geological Survey indicates its willingness to amend such classification based on verification of information to be supplied by the offeror, the case will be remanded for further consideration.

Jean Szczepanski, 44 IBLA 206 (Dec. 11, 1979)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and where the applicant omits from his address, the State and zip code, the lease offer is properly rejected.

A simultaneous oil and gas lease drawing entry card omitting the State and zip code from the offeror's address is properly rejected and the filing fee is properly retained by the Bureau of Land Management.

Robert C. Meredith, 44 IBLA 213 (Dec. 11, 1979)

A drawing entry card in a simultaneous oil and gas lease filing may not be rejected on the basis that the card sets out as part of the parcel designation the complete name of the State where the governing office of BLM is located instead of the abbreviated State code prefix.

Joe L. Frazier, 44 IBLA 233 (Dec. 11, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where two of three offerors sign a drawing entry card (DEC) in one of two signature boxes, and the third offeror signs in the other signature box provided on Form 3112-1, and the same date of signing is entered in each of the two appropriate boxes on the DEC for the date, adjacent to the two signature boxes, so that it is evident that the date applies equally to all three signatures on the card, the failure to enter a third date on the offer is not grounds for rejection of the DEC.

Eugene S. Pitkin et al., 44 IBLA 318 (Dec. 31, 1979)

Amendments

An acquired lands lease offer for land in which the United States owns only a fractional mineral interest is defective and subject to rejection when the applicant fails to accompany his offer with the statement required by the regulations showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror subsequently submits his statement regarding ownership of operating rights prior to a final decision rejecting the offer, the defect may be considered cured with priority of filing as of the time the statement was filed.

John Cakason, Jean Cakason, 21 IBLA 185 (July 25, 1975)

An oil and gas lease offer filed under the simultaneous filing procedures, 43 CFR Subpart 3112, which is defective for failure to comply with a mandatory regulation may not be cured by subsequent filing of supplemental information after the drawing is held.

Grady Argenbright, 27 IBLA 24 (Sept. 17, 1976)

An oil and gas lease offer filed by a corporation under the simultaneous filing procedures, 43 CFR Subpart 3112, which is defective for failure to provide evidence of corporate qualifications may not be cured by subsequent filing of supplemental evidence after the drawing is held and must be rejected.

Churchill Corp., 27 IBLA 238 (Oct. 12, 1976)

A deficient over-the-counter oil and gas lease offer may be cured by the offeror's submission of corrective information prior to a final departmental decision, but only with priority of filing as of the date the corrective information was filed.

C. C. Hughes, 33 IBLA 237 (Dec. 28, 1977)

Where an over-the-counter noncompetitive oil and gas lease offer is filed by a corporation unaccompanied by a statement of its qualifications or a reference by serial number to the record in which it has been filed, and such defect is remedied prior to the filing of any junior offer, the first offer may be considered with priority as of the date the curative data is filed.

RL Industries, Inc., 41 IBLA 38 (May 29, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Amendments--Continued

A person filing a simultaneous offer for an oil and gas lease is presumed to understand the difference between a filing in the name of a trust and a filing in an individual capacity, and despite an allegation that the trust filing was instructed by unspecified Bureau of Land Management personnel, the principles of estoppel may not be invoked to change a defective trust filing into a filing by an individual.

Tony C. Nielsen, 44 IBLA 269 (Dec. 19, 1979)

Attorneys-in-Fact or Agents

An oil and gas lease offer signed by an attorney-in-fact for the offeror is properly rejected where it is not accompanied by a separate statement of the attorney's interest or lack of interest in the offer and the lease, if issued, as required by departmental regulation.

Southern Union Production Co., 22 IBLA 379 (Nov. 17, 1975)

Mitchell Energy Corp., 32 IBLA 248 (Sept. 21, 1977)

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue an oil and gas lease to anyone other than the first-qualified applicant. If an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed. Where a rubber stamp constitutes an applicant's signature, a State Office of the Bureau of Land Management need not presume that an applicant rather than an agent stamped the card, and where no agent's statement has been submitted, the State Office may take appropriate action to establish that the applicant's signature was imprinted at his request and that he formulated the offer.

Robert C. Leary et al., 27 IBLA 296 (Oct. 26, 1976)

Arthur S. Watkins, Robert N. Eckerman, 28 IBLA 79 (Nov. 12, 1976)

Where a rubber stamp constitutes an offeror's signature on a simultaneous oil and gas lease entry card, the Bureau of Land Management need not presume that the offeror rather than an agent stamped the card, and where no agent's statement has been submitted, BLM may take appropriate action to establish the circumstances under which the signature was stamped on the card.

"Agent." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include an employee who has no discretionary authority and merely acts as the employer's amanuensis in affixing the employer's stamp on a simultaneous oil and gas lease offer entry card, even if it is done outside the actual physical presence of the employer. Any statement required by the Bureau of Land Management to establish the identity of the person who stamped the offeror's name on the card must allow the offeror to provide information to establish whether or not the person was an agent within the meaning of 43 CFR 3102.6-1; merely requiring the offeror to show the stamp was affixed by him or in his presence is not sufficient.

Evelyn Chambers, 27 IBLA 317 (Nov. 8, 1976) 83 I.D. 533

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Where a facsimile affixed by means of a rubber stamp or other mechanical device constitutes an applicant's signature on a drawing entry card lease offer, a State Office of the Bureau of Land Management need not presume that the applicant, rather than an agent, stamped the card. It is proper for the BLM office to make inquiry into the filing to establish that the applicant's signature was affixed at his request and that he formulated the offer. If it is disclosed that the signature was affixed pursuant to a power of attorney, and the offer was not accompanied by the statements required by 43 CFR 3102.6-1, the offer must be rejected.

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue a noncompetitive oil and gas lease to anyone other than the first-qualified applicant. If a drawing entry card lease offer is signed by an agent or attorney-in-fact in behalf of the applicant, or if a facsimile signature of the applicant is affixed upon the offer by an agent or attorney-in-fact, the offer cannot be considered to have been submitted by a qualified applicant unless it is accompanied by the statements required by 43 CFR 3102.6-1.

William J. Sparks, 27 IBLA 330 (Nov. 4, 1976) 83 I.D. 538

An oil and gas lease offer for lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. If an agent signs such statement, rather than the offeror, the regulations require that evidence be filed of the authority of the agent to sign the statement. The agent's signature will be acceptable only if the authorization meets the specifications of the regulations.

Frank C. Wells, 28 IBLA 113 (Nov. 15, 1976)

When a rubber stamp is used to affix a signature to a drawing entry card an no agent's statement has been submitted, a State Office of the Bureau of Land Management may take appropriate action to establish whether the applicant's signature was imprinted by him or at his request by an amanuensis and that he formulated the offer.

Mary I. Wiland, Elizabeth B. O'Donnell, 28 IBLA 300 (Jan. 10, 1977)

"Agent." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include a son who has no discretionary authority and merely acts as his mother's amanuensis in affixing her signature on a simultaneous oil and gas lease offer entry card. Therefore, no further statement is required by the Bureau of Land Management to establish whether or not the son was an agent within the meaning of 43 CFR 3102.6-1.

Rebecca J. Waters, 28 IBLA 381 (Feb. 4, 1977)

Use of a rubber-stamped facsimile of an offeror's signature on a simultaneous oil and gas lease entry card invites inquiry into whether the card was stamped by the offeror or, instead, by his agent.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

"Agent." The word "agent," as used in 43 CFR 3102.6-1, requiring statements of authority and disclosure of interests in oil and gas leases by agents, includes all persons or companies having discretionary authority to act on the offeror's behalf concerning the offer or lease.

D. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

Where an oil and gas lease offer is signed by an agent on behalf of the offeror, the regulations with respect to qualifications of lessees require evidence of the authority of the agent and separate statements by the offeror and the agent regarding the nature and extent of any interest the agent has in the lease. The same requirement applies where the offeror's facsimile signature is affixed on the offer by an agent. An offer must be rejected where this information is not filed.

The Bureau of Land Management (BLM) has a responsibility to issue noncompetitive oil and gas leases only to the first-qualified offeror. A rubber-stamped or other form of facsimile signature, unlike a handwritten signature, does not give rise to a presumption that it was personally executed by the offeror. The BLM may inquire of the circumstances under which the signature was stamped on the offer to determine whether compliance with 43 CFR 3102.6-1 was required.

Where the facsimile signature on an oil and gas lease offer is not affixed to the offer by the offeror himself, the circumstances under which the signature is imprinted by a third party are determinative of whether he was acting as an agent. It becomes important to know who actually formulated the offer--whether the offeror knew that he was applying for a lease of the specific lands described in the offer.

Charlotte L. Thornton, William B. Weaver, Jr., Robert L. Smith, 31 IBLA 3 (June 15, 1977)

A BLM office need not presume that an applicant rather than an agent stamped a facsimile signature on a drawing entry card, and where no agent's statement has been submitted as required by 43 CFR 3102.6-1, a Bureau office may inquire as to whether the applicant's signature was imprinted at his request and whether he formulated the offer.

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped or other facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply, and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

Ray B. Thames, 31 IBLA 167 (July 5, 1977)

Where an inquiry by the BLM discloses that oil and gas lease applicants imprinted their own facsimile signatures on their drawing entry cards, there can be no question of the application of 43 CFR 3102.6-1(a)(2) since this regulation operates where an agent or attorney in fact affixes the applicant's signature on the applicant's behalf.

Evelyn Chambers and Jerry Chambers, 31 IBLA 381 (Aug. 10, 1977)

Where an entry card in a public drawing is signed by the offeror but completed by an agent or attorney-in-fact, the separate signed statements by the attorney-in-fact or agent required by the pertinent regulation, 43 CFR 3102.6-1(a)(2), need not be filed.

Virginia A. Parozo, 33 IBLA 384 (Jan. 18, 1978)

Patricia E. Parks, 34 IBLA 384 (May 2, 1978)

Cecil K. Woodlock, Anthony J. Visco, 38 IBLA 186 (Dec. 6, 1978)

Where an inquiry by BLM discloses that an oil and gas lease applicant personally signed his name on his drawing entry card, there can be no question of the application of 43 CFR 3102.6-1(a), since this regulation operates only where an agent or attorney in fact signs the card on his principal's behalf.

Adam F. Zbilski, 34 IBLA 4 (Feb. 8, 1978)

Where a drawing entry card submitted in a simultaneous oil and gas lease filing has been signed by the applicant, its completion by a duly authorized agent, including insertion of a current date, all else being regular, does not call into play other requirements of pertinent regulations.

Kenneth Ross, 34 IBLA 61 (Feb. 16, 1978)

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent are submitted along with his offer card.

Where an offeror and his agent filing service submit statements along with a drawing entry card, which statements indicate unequivocally that there is no agreement between them creating an interest in the agent, thus apparently obviating the need to submit details of the offeror/agent agreement per 43 CFR 3102.6-1, BLM, in its discretion, may either decline to inquire further into the details of the agreement or may request and examine a copy of the agreement to determine whether such an "interest" in the agent existed at the time the offer was filed.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and *not* an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Virginia L. Jones, 34 IBLA 188 (Mar. 21, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Appellant's charges in respect of filing of registration statements for compliance with securities laws go to question of relationships between filing service companies and their investors, and as such, are properly for consideration by Securities and Exchange Commission. Where they do not indicate noncompliance with oil and gas leasing statutes and regulations, such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

Elias C. Bacil, 34 IBLA 322 (Apr. 24, 1978)

It is improper for the Bureau of Land Management to reject an oil and gas lease simultaneous drawing entry card solely because a filing service completed the card, including parcel number and date, after the offeror had signed it. This is not an action by an agent or attorney-in-fact requiring compliance with 43 CFR 3102.6-1.

Emily S. Corda, 35 IBLA 12 (May 4, 1978)

A successful drawee in a simultaneous oil and gas lease drawing will not be disqualified to receive a lease by reason of allegations to the effect that the winning drawing entry card was filed for such drawee by an agent and that the agent has failed to observe the registration requirements of the Securities Act of 1933.

John B. McCann, 35 IBLA 32 (May 8, 1978)

Appellant's charges in respect of filing of registration statements for compliance with securities laws go to question of relationships between filing service companies and their investors, and as such, are properly for consideration by Securities and Exchange Commission. Where they do not indicate noncompliance with oil and gas leasing statutes, regulations, and decisions of this Department, such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

Elias C. Bacil, 35 IBLA 198 (May 24, 1978)

Dexter D. Spalding, 37 IBLA 4 (Sept. 6, 1978)

A consent decree obtained by the Securities and Exchange Commission establishes no precedent for cases involving different parties. Allegations of Federal securities law violations in connection with Federal oil and gas leasing should be directed to the Securities and Exchange Commission, the agency with jurisdiction over such matters. The jurisdiction of the Board of Land Appeals does not extend to matters exclusively under the jurisdiction of the SEC, but goes to matters involving compliance with oil and gas leasing statutes and regulations.

Marion Bacil, 35 IBLA 366 (June 23, 1978)

Where a drawing entry card is signed by an attorney-in-fact or agent on behalf of the applicant, the offer cannot be considered to have been submitted by a qualified applicant unless accompanied by a statement evidencing that the attorney-in-fact's authority is still in effect, as required by 43 CFR 3102.6-1.

Energy Resources Group, Inc., 36 IBLA 57 (June 30, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, the burden is on a protestant attacking the validity of the offer to prove an accusation that there is an agreement giving the filing service an enforceable interest in the lease to be issued.

Clyde E. Frazier, 36 IBLA 141 (July 25, 1978)

A successful drawee in a simultaneous oil and gas lease drawing will not be disqualified to receive a lease by reason of unsubstantiated allegations to the effect that the winning drawing entry card was filed for such drawee by an agent and that the agent has failed to observe the registration requirements of the Securities Act of 1933.

Percy E. Watkins, 36 IBLA 168 (July 31, 1978)

A handwritten signature is presumed to be written by the person named. Where an attorney-in-fact or an agent does not sign a drawing entry card, the provisions of 43 CFR 3102.6-1 are not invoked.

A consent decree obtained by the Securities and Exchange Commission (SEC) establishes no precedent for cases involving other parties. The Board of Land Appeals lacks jurisdiction over matters delegated to the SEC. Allegations of Federal Securities Law violations should be directed to the SEC rather than to the Board of Land Appeals.

William Miller, 36 IBLA 309 (Aug. 28, 1978)

An offeror's use of a leasing service's address on the drawing entry card for a simultaneous oil and gas lease drawing does not disqualify the offer, all else being regular, nor does it call into play other requirements of pertinent regulations.

Lisa Heymann, 37 IBLA 170 (Oct. 10, 1978)

Where a contract between an oil and gas lease offeror and a leasing service created an agency relationship, in the absence of circumstances giving the agent an authority coupled with an interest, the agent's authority ordinarily terminated upon the death of the principal. If the leasing service had an interest, a lease could not issue to the estate of the deceased if no statement was filed delineating the nature and extent of that interest as required by 43 CFR 3102.7.

Estate of Charles L. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

D. E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978) 85 I.D. 408

Gertrude M. D'Amico, 39 IBLA 68 (Jan. 17, 1979)

H. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

J. A. Masek, 40 IBLA 123 (Mar. 27, 1979)

Blanche V. White, 40 IBLA 152 (Mar. 30, 1979)

Bernard Pease, 43 IBLA 292 (Oct. 17, 1979)

A decision by BLM which states that an oil and gas lease offer must be rejected because the offeror did not submit evidence with his drawing entry card as to who affixed a facsimile signature thereon and how his offer was formulated is erroneous. However, where BLM allows the offeror a last chance to submit this information prior to rejecting the offer, that decision will not be vacated, but will be modified and regarded as a simple request for additional information from which to determine whether the offeror's failure to file an agency statement requires rejection of his offer per 43 CFR 3102.6-1(a)(2).

A request to an oil and gas lease offeror for additional information from which to determine whether his failure to file an agency statement requires rejection of his offer per 43 CFR 3102.6-1(a)(2) need not demand information regarding whether the agent who signed the offer card, if any, has an interest in the offer, as the offer will be rejected in these circumstances because no agency statement was filed, regardless of whether or not the agent has an undisclosed interest in the offer.

Under 43 CFR 1821.3-1, information submitted by an oil and gas offeror pursuant to a request by BLM need not be made by affidavit under oath.

Duncan Miller, 38 IBLA 154 (Dec. 5, 1978)

Even though a power of attorney has been filed with the State Office of the Bureau of Land Management and reference to this was included on a simultaneously filed oil and gas lease drawing entry card, the regulations require that the attorney-in-fact or agent file two additional statements along with the card: first, a statement that his authority is still in effect as required by 43 CFR 3102.6-1(a)(1), and second, a statement by the attorney-in-fact or agent about his agreement with the offeror and any interest in the lease pursuant to 43 CFR 3102.6-1(a)(2).

Cotton Petroleum Corp., 38 IBLA 271 (Dec. 13, 1978)

Under 30 U.S.C. § 226 (1976), the Department has no authority to issue an oil and gas lease to other than the first-qualified applicant, and if an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been timely filed.

Where a rubber stamp is used to imprint an applicant's signature, and where no agent's statement has been submitted under 43 CFR 3102.6-1, a State Office may take appropriate action to establish whether the applicant's signature was imprinted at his request and whether he formulated the offer.

William I. Bugge, Jr., 39 IBLA 332 (Feb. 27, 1979)

A successful drawee in a simultaneous oil and gas lease drawing will not be disqualified to receive a lease because of an allegation that his leasing service has failed to observe the registration requirements of the Securities Act of 1933.

D. E. Pack, 40 IBLA 45 (Mar. 15, 1979)

The applicability of 43 CFR 3102.6-1 governing agents is far less certain where the agent is the offeror and is also the agent of the other interested parties who will ultimately hold the entire lease interest, as no provision of the regulation unambiguously requires the agent in these circumstances to show that he has authority to sign his own name as offeror.

Robert B. Bressley, 40 IBLA 215 (Apr. 10, 1979)

Where a drawing entry card offer to lease is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

L. B. Dunn, 40 IBLA 335 (May 8, 1979)

Where there is no evidence in the record that the offeror with first priority in a simultaneous oil and gas lease drawing is not the sole party in interest, a protest alleging an interest in a filing service may properly be dismissed.

Charges that an oil and gas lease filing service has not complied with the Securities Act of 1933 are properly raised before the Securities and Exchange Commission rather than the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

Joseph J. O'Keefe, 40 IBLA 376 (May 16, 1979)

Where separate statements of interest are required pursuant to 43 CFR 3102.6-1(a)(2) (1977), this Board must affirm the dismissal of a protest against the issuance of an oil and gas lease which is premised on the protestant's contention that the statement of the offeror must bear his original, holographic signature.

Although a lease offer may not be rejected solely because an agent affixed the offeror's facsimile signature to the offeror's separate statement, this does not prevent BLM from requiring that the offeror personally verify the information contained therein and provide whatever supplemental information may reasonably be required. A private agent may not interpose himself between a lease applicant and the Government

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

so as to mask the identity of the applicant and prevent direct contact by Federal officials who are properly concerned.

W. H. Gilmore, 41 IBLA 25 (May 29, 1979)

It is not proper to reject a drawing entry card oil and gas lease offer solely because an agent affixed the offeror's facsimile signature to both the DEC and to the offeror's separate statement required by 43 CFR 3102.6-1, as BLM may require that the offeror personally verify the information contained in the offer and in the statement, and provide whatever supplemental information that BLM may reasonably require.

Robert D. Conn et al., 41 IBLA 55 (May 31, 1979)

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent, such statements bearing a facsimile signature, are submitted along with his offer card.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b). A leasing service, which files a simultaneous noncompetitive oil and gas lease offer drawing entry card on behalf of its client, bound by a "put option" does not have a hidden interest in the offer and does not violate 43 CFR 3102.7 by failing to disclose this put option or 43 CFR 3112.5-2 by filing offers for more than one client on a parcel.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to present evidence of an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

Jack Mask, 41 IBLA 147 (June 18, 1979)

Kelley Everette, 41 IBLA 155 (June 18, 1979)

A decision by BLM rejecting a noncompetitive oil and gas lease drawing entry card offer because someone other than the offeror affixed a facsimile of the offeror's signature on the card and agency statements were not filed as required by 43 CFR 3102.6-1 will be vacated where BLM bases its finding to this effect on a statement made by the offeror 6 months previously concerning the preparation of other, earlier offers, and where the offeror alleges on appeal that she actually affixed the facsimile herself on the offer in question.

Miriam Weisman (Barnes), 41 IBLA 166 (June 18, 1979)

A handwritten signature may be presumed to be written by the person named. Where an attorney-in-fact or an agent does not sign a drawing entry card, the provisions of 43 CFR 3102.6-1 are not invoked.

The fact that the addresses of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

Where there is no evidence of any violation of the regulations in the record, the burden is on the protestant to submit competent evidence of an accusation that there is an agreement giving a filing service an enforceable interest in the lease, absent which the protest is properly rejected. Allegations that there was a contract between the offeror and a filing service in which the filing service withholds an overriding royalty interest from the offeror and participates in the proceeds, without evidence, is not sufficient to show that the offeror was not a sole party in interest.

J. Theodore Ellis, L. L. Beck, 41 IBLA 231 (June 27, 1979)

Where oil and gas lease offerors enclose agency statements with their drawing entry cards, which statements are clearly intended to, and appear to, apply to their offers, their cards are fully executed notwithstanding their failure to note on the face of the cards that the agency statements are enclosed, as nothing in the regulations or on the card directs an offeror to do so.

Nothing in the regulations requires an agency statement submitted under 43 CFR 3102.6-1(a) to be dated. Rather, the statement is an adjunct to the drawing entry card and is considered dated as of the signing and dating of the card.

An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed. Rather, such statements may be submitted over facsimile signatures.

Frederick T. Peters et al., 41 IBLA 262 (June 26, 1979)

Where the record does not show and it does not appear that a signature on a drawing entry card is a facsimile, but rather that it is the genuine handwritten signature of the offeror, BLM's decision stating that it is a facsimile and requesting more information about the circumstances surrounding its being affixed will be vacated, as the requirements of 43 CFR 3102.6-1(a)(2) do not apply.

Burley Gregory, 43 IBLA 82 (Sept. 19, 1979)

It is not proper to reject a drawing entry card oil and gas lease offer solely because an agent affixed the offeror's facsimile signature to both the DEC and to the offeror's separate statement required by 43 CFR 3102.6-1, as BLM may require that the offeror personally verify the information contained in the offer and in the statement, and provide whatever supplemental information that BLM may reasonably request. An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed.

Frances L. Dunn et al., 43 IBLA 282 (Oct. 10, 1979)

Oil and gas lease offerors are advised to refer to accompanying attachments on their drawing entry cards. However, where neither the regulations nor the instructions on the drawing entry card require that the card refer to the statements required by 43 CFR 3102.6-1.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

a noncompetitive oil and gas lease offer cannot be rejected for failure to do so, where such statements were actually submitted with the card.

Eharrc Associates, 43 IBLA 317 (Oct. 22, 1979)

Brooks Griggs, 44 IBLA 185 (Nov. 30, 1979)

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to present competent evidence supporting the accusation that there is an agreement giving the agent an enforceable interest in the lease to be issued. In absence of such evidence, the protest is properly rejected.

Alice M. Hardy, 44 IBLA 5 (Nov. 6, 1979)

In the absence of a regulatory requirement, it is not proper to reject a drawing entry card oil and gas lease offer solely because an agent affixed the offeror's facsimile signature to the DEC and the separate statements of the offeror and the agent submitted in satisfaction of 43 CFR 3102.6-1 are machine copies, as BLM may require that the offeror personally verify the information contained in the offer and the statement, and provide whatever supplemental information that BLM may reasonably request. An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed.

Nothing in the regulations requires an agency statement submitted under 43 CFR 3102.6-1(a) to be dated. The statement is an adjunct to the drawing entry card and is considered dated as of the signing and dating of the card.

Lewis W. Peters, 44 IBLA 35 (Nov. 6, 1979)

"Certified." Under 43 CFR 1821.3-1(a), additional information submitted by an oil and gas offeror pursuant to a request by BLM need not be in affidavit form. A request for a "certified" copy of an unrecorded document in the possession of its owner connotes the intention that the owner attach an affidavit attesting to its authenticity.

Martha P. Merrill, 44 IBLA 136 (Nov. 30, 1979)

Description

An oil and gas lease offer for less than 640 acres of land is properly rejected when the application fails to include adjoining, unsurveyed, nonnavigable riverbed lands which were available for leasing at the time the offer was filed.

John B. Williams, 18 IBLA 354 (Jan. 16, 1975)

No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation, or where the land is surrounded by lands not available for leasing, and where these circumstances do not exist, an offer for less than 640 acres must be rejected.

John F. Brown, 22 IBLA 50 (Sept. 16, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

Where an over-the-counter oil and gas lease offer is rejected because the applicant did not specify which of the described tracts he wanted the offer to include, he is presumed to have applied for all the tracts. Where on appeal he asserts that he desired to lease all the described lands, the decision will be reversed.

E. C. Nesin, 22 IBLA 226 (Oct. 15, 1975)

An oil and gas lease offer embracing a tract of land which appears on the official survey plat as a meandered lake which is unsurveyed must give a metes and bounds description of the meandered tract tied to an official corner of the public land surveys. In the absence of such a description, the offer must be rejected.

Marilyn E. Crandall, 25 IBLA 180 (June 14, 1976)

An oil and gas lease offer will not be rejected on the basis of a defective land description merely because some of the land applied for is not available for leasing where the offeror has submitted advance rental for all of the land described. Generally, where an offer describes an entire section and only part of that land is available for leasing, a lease will be issued for the land available and the offer rejected for the balance of the land in the section.

The description of an entire section of land modified by the word "available" in an oil and gas lease application is an offer to lease all of that section, subject to availability for leasing. An offer containing such a description need not be rejected for lack of a legally sufficient description where the offer is accompanied by the required rent for all of the land described therein.

Milan S. Pavlak, 30 IBLA 77 (Apr. 18, 1977)

Where there is no ambiguity or confusion in the description of lands in an oil and gas lease offer because it includes a complete description of land in a section in a particular township by legal subdivisions embracing unnumbered survey lots or fractional subdivisions, as well as a description of unnumbered lots in accord with current survey numbering practice, the lot designation may be disregarded, and the regulatory requirement that lands in an oil and gas lease offer which have been surveyed under the public land rectangular system must be described by legal subdivision, section, township, and range, is satisfied, even though the official plat of survey does not designate or number the fractional subdivisions as lots.

David H. Yates, 33 IBLA 175 (Dec. 20, 1977)

BLM is not required to alter, modify, or correct an over-the-counter oil and gas lease offer in order to resolve a disparity in the land description contained therein.

C. C. Hughes, 33 IBLA 237 (Dec. 28, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

BLM is without authority to alter an ambiguous competitive oil and gas lease bid in order to make it valid.

Where an oil and gas competitive lease bid is ambiguous, due to the inclusion in it of irreconcilable conflicting descriptions of the desired land, BLM should reject it.

D. E. Price, 34 IBLA 61 (Feb. 14, 1978)

An oil and gas lease drawing entry card is properly rejected where it contains incorrect information, in that the parcel number of the land applied for is misstated, notwithstanding the fact that the misstatement was the result of an inadvertent typographical error.

Amerada Hess Corp., 34 IBLA 68 (Feb. 17, 1978)

Where an offer for an oil and gas lease describes lands by reference only to the rectangular survey system, without reference to the fact that part of these unpatented lands are also within a mineral survey, the offer will be regarded as including the lands within the mineral survey if it is clear from the offer that the offeror so intended.

Bill J. Maddox, 34 IBLA 278 (Apr. 17, 1978)

Where an offer for an oil and gas lease describes lands in a section number followed by several aliquot parts and concludes with the words "(all available)," those words refer only to lands available within the aliquot parts and not to other aliquot parts of the section not specifically listed.

Joan Oakason, 34 IBLA 355 (Apr. 26, 1978)

A drawing entry card which does not contain the full designation of the parcel applied for, including the alphabetical State Office code as prefix, is not fully executed and must be rejected.

Lee R. Messinger, 44 IBLA 236 (Dec. 11, 1979)

A metes and bounds description, with courses and distances between successive angle points and appropriate ties to the nearest official survey corner, is properly required pursuant to 43 CFR 3101.2-3(a) where the description of lands in an oil and gas lease offer cannot be conformed to the public land surveys.

Wilfred Plomis, 44 IBLA 266 (Dec. 19, 1979)

Drawings

An oil and gas lease offer drawn first in a simultaneous filing is properly rejected under 43 CFR 3103.3-1 and 43 CFR 3111.1-1(e)(1) where the offer is deficient in the first year's rental by more than 10 percent. The amendment of the regulations to eliminate the requirement that the advance rental must be submitted with simultaneous filings, effective Sept. 17, 1973, was of prospective effect only, and may not be invoked to cure a defect in rental payment in a simultaneously filed lease offer pending on Sept. 17, 1973.

Duncan Miller, 19 IBLA 133 (Mar. 5, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Drawing entry cards for simultaneous oil and gas lease offers which are incomplete will be rejected and the filing fees will be retained.

Albert E. Mitchell, III, 20 IBLA 302 (May 30, 1975)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted "apparent inefficiency of the United States Mails."

Mar-Win Development Co., 20 IBLA 383 (June 12, 1975)

Where a drawing was held to determine the priority of simultaneous oil and gas lease applicants and afterwards it was discovered that cards for another parcel had inadvertently been included in the drawing, the results of the drawing will stand, as all applicants in the drawing had an equal chance to win.

Verna C. [illegible], 21 IBLA 155 (July 21, 1975)

When several offers for a noncompetitive oil and gas lease are filed for the same parcel during a simultaneous filing period and all are withdrawn after the drawing but before a lease is issued, the land is not thereby made available for an over-the-counter offer but must be included in a subsequent list of lands available for filing under the simultaneous drawing procedure.

Edward [illegible], 22 IBLA 6 (Sept. 8, 1975)

When a person files an offer for a noncompetitive oil and gas lease and when his agent files another offer for the same parcel on behalf of the principal, both offers must be rejected because the principal's improved chance of success made the drawing inherently unfair whether or not there has been any collusion or intent to deceive the Department.

[illegible], 22 IBLA 13 (Sept. 8, 1975)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information.

Manhattan Resources, Inc., 22 IBLA 24 (Sept. 9, 1975)

Southern Union Production Co., 22 IBLA 379 (Nov. 17, 1975)

James E. Caddell, 25 IBLA 276 (June 28, 1976)

Vernon C. Powell, 30 IBLA 70 (Apr. 18, 1977)

Mitchell Energy Corp., 32 IBLA 244 (Sept. 23, 1977)

Alfred L. Easterday, 34 IBLA 195 (Mar. 22, 1978)

Charles J. Rydz, 40 IBLA 276 (Apr. 10, 1979)

Continued--

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Frederick W. Lowey et al., 40 IBLA 301 (May 14, 1979)

Resource Exploration & Mining, Inc., 42 IBLA 63 (Aug. 2, 1979)

Herbert Adler, 42 IBLA 228 (Aug. 22, 1979)

Filing fees may be retained when drawing entry cards made on reproduced forms are rejected.

Charles J. Babington et al., 22 IBLA 143 (Sept. 30, 1975)

The successful drawee in a drawing under the special simultaneous filing procedure for noncompetitive oil and gas lease offers is automatically disqualified if he fails to pay rental within 15 days from receipt of notice that such payment is due. A statement by such a drawee that he did not receive a notice and that his office records where his oil and gas records are contained lack any copy of the rental notice is insufficient to overcome the presumptive effect of evidence that Bureau of Land Management officials mail copies of the notice of rental, a notice of stipulations to be signed, and the stipulations in the same envelope, and it is clear the envelope containing the stipulations was received at the drawee's office.

A. S. Golden, 22 IBLA 261 (Oct. 24, 1975)

When a person files two offers for a parcel of land in a drawing of oil and gas lease offers filed in a simultaneous lease offering, the regulation requires that the offers be rejected.

Arthur E. Davison, 23 IBLA 15 (Nov. 26, 1975)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not signed or dated by the offeror.

Thomas Buckman, 23 IBLA 21 (Nov. 26, 1975)

John Willard Sisson, 28 IBLA 275 (Dec. 20, 1976)

Thomas C. Nolan, 32 IBLA 168 (Sept. 13, 1977)

Adobe Oil and Gas Corp., 34 IBLA 13 (Feb. 10, 1978)

William F. Banks, 36 IBLA 403 (Sept. 6, 1978)

Harley W. Adams, Timothy J. Claiborne, Sr., 42 IBLA 226 (Aug. 22, 1979)

Harley W. Adams, 43 IBLA 144 (Sept. 28, 1979)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is postdated beyond the date of the drawing.

Ray Sloan, 24 IBLA 10 (Feb. 4, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

Paula J. Jones, 24 IBLA 76 (Feb. 24, 1976)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he/she fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his/her failure to do so cannot be excused because of the asserted delay of the postal service.

John Paul Pratt, 24 IBLA 110 (Mar. 1, 1976)

Carma M. Pooley, 29 IBLA 304 (Mar. 30, 1977)

Jack Koegel, 30 IBLA 143 (May 12, 1977)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due. An attempt to make payment after the close of office hours on the day the payment is due will not prevent the disqualification.

B. Evans Kennedy, 24 IBLA 152 (Mar. 10, 1976)

Simultaneous oil and gas lease drawing entry cards which are not executed correctly will be rejected. Where an ambiguity is created by an applicant on a drawing entry card, it is not the responsibility of BLM to speculate about applicant's intention and necessarily to resolve the ambiguity in his favor.

Joseph A. Winkler, 24 IBLA 300 (Apr. 29, 1976)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits the date of execution on the card, the lease offer is properly rejected.

Where an applicant fails to date a simultaneous oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and his offer is properly rejected whether the defect is discovered before or after the drawing. The fact that BLM entered the card in the drawing does not waive the defect.

John R. Minich et al., 25 IBLA 107 (June 7, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the State in which the parcel of land is located.

Ray Granat et al., 25 IBLA 115 (June 7, 1976)

Jerry Van Waardhuizen, 26 IBLA 152 (Aug. 2, 1976)

Martin H. Sheets, 32 IBLA 7 (Aug. 29, 1977)

When the Bureau of Land Management discovers that an entry card was erroneously omitted from a simultaneous drawing for an oil and gas lease, the drawing is void and a new drawing, with all cards included, must be held.

Marshall & Winston, Inc., 25 IBLA 169 (June 14, 1976)

A simultaneous oil and gas lease offer is properly rejected when the offeror fails to execute fully the drawing entry card by not identifying on the card the State in which the parcel of land is located.

Roswell E. Marreto and Doris O. Marreto, 25 IBLA 218 (June 16, 1976)

Richard Lovett, 27 IBLA 306 (Oct. 27, 1976)

Gerald G. Calhoun, 27 IBLA 362 (Nov. 8, 1976)

Donna E. Van De Walker, 28 IBLA 60 (Nov. 9, 1976)

A simultaneous oil and gas lease offer is properly rejected where the drawing card is not signed.

A simultaneous oil and gas lease offer is properly rejected when the date is omitted from the drawing card.

Herbert W. Schollmeyer, 25 IBLA 393 (July 6, 1976)

The dismissal of a protest, which consists of a mere allegation that the successful drawee was engaged in practices militating against the fairness of the drawing, will be sustained on appeal absent any substantiating evidence supporting the allegation.

Duncan Miller, 26 IBLA 37 (July 8, 1976)

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the State in which the parcel of land is located where called for on the card.

When the Secretary of the Interior determines that an oil and gas lease is to be issued for a particular tract, it must be issued to the first-qualified applicant. An applicant is not qualified because of his failure to comply with 43 CFR 3112.2-1(a) when he fails to provide the name of the State in which the parcel of land is located.

Ishmael Guerra, 26 IBLA 116 (July 26, 1976)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and when the applicant omits her address, the lease offer is properly rejected and the filing fee properly retained.

Grace M. Williams, 26 IBLA 232 (Aug. 17, 1976)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within 15 days after the filing of the lease offer, the offer must be rejected.

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

Chesney B. Allred, Edward C. Allred, 26 IBLA 276 (Aug. 24, 1976)

When an oil and gas lease offeror whose entry card was drawn first in a simultaneous drawing fails to pay the rental within 15 days after receiving notice that payment is due, he is automatically disqualified under 43 CFR 3112.4-1 from receiving the lease.

Frank De Jong, 26 IBLA 327 (Aug. 30, 1976)

A simultaneous oil and gas entry card must be signed and fully executed by the applicant. A decision rejecting such an offer will be upheld where failure to complete the date on the card renders the applicant's certification as to qualifications ineffective and causes the entry card to be incomplete.

Helen E. Farris, 26 IBLA 382 (Sept. 9, 1976)

Tina A. Brown, 33 IBLA 213 (Dec. 21, 1977)

An oil and gas lease offer filed under the simultaneous filing procedures, 43 CFR Subpart 3112, which is defective for failure to comply with a mandatory regulation may not be cured by subsequent filing of supplemental information after the drawing is held.

Grady Argenbright, 27 IBLA 26 (Sept. 17, 1976)

Where it does not appear that the notice required by sec. 7(b) of the Privacy Act of 1974 regarding the disclosure of a social security number was given, an oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure should not be considered defective solely because the applicant omitted designating the social security number on the card as provided thereon.

An oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure is properly rejected as defective where there are other parties in interest in addition to the applicant but the card does not list them or refer to an attachment, and an attachment dated nearly 6 months prior to the filing, signed by the applicant and four others stating their qualifications and setting forth a percentage of interest for each as "Partners in interest," fails adequately to set forth the nature of their agreement, and no other statement

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

or information is filed within the time required by 43 CFR 3102.7.

Harry Reich, 27 IBLA 123 (Sept. 30, 1976) 83 I.D. 507

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing of simultaneous oil and gas lease offers and the vice president and secretary of the corporation also filed applications for the same parcel of land in the same drawing, as individuals, the offer of the corporation must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation and thereby increase its chances to be the successful applicant.

Eadra Corp., 27 IBLA 220 (Oct. 7, 1976)

An oil and gas lease offer filed by a corporation under the simultaneous filing procedures, 43 CFR Subpart 3112, which is defective for failure to provide evidence of corporate qualifications may not be cured by subsequent filing of supplemental evidence after the drawing is held and must be rejected.

Churchill Corp., 27 IBLA 236 (Oct. 12, 1976)

A simultaneous oil and gas lease offer is properly rejected when the applicant has not fully executed the drawing entry card by failing to identify on the card the State in which the parcel of land is located.

James W. O'Connor, 27 IBLA 247 (Oct. 18, 1976)

Failure to execute fully an oil and gas drawing card (by omitting the zip code) properly results in the rejection of the offer.

Even assuming that a BLM order has the force and effect of a regulation, it cannot be applied retroactively where there are intervening rights or the interests of the United States would be adversely affected. Where there is a no. 2 oil and gas drawing card, it constitutes an intervening right.

Beverly J. Steinbeck, 27 IBLA 249 (Oct. 18, 1976)

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue an oil and gas lease to anyone other than the first-qualified applicant. If an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed. Where a rubber stamp constitutes an applicant's signature, a State Office of the Bureau of Land Management need not presume that an applicant rather than an agent stamped the card, and where no agent's statement has been submitted, the State Office may take appropriate action to establish that the applicant's signature was imprinted at his request and that he formulated the offer.

Robert C. Leary et al., 27 IBLA 296 (Oct. 26, 1976)

Arthur E. Watkins, Robert B. Scheiman, 28 IBLA 79 (Nov. 12, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An unsigned and undated drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected.

Frank De Jong, 27 IBLA 313 (Oct. 29, 1976)

Milo W. Snider, 33 IBLA 42 (Nov. 25, 1977)

A simultaneous oil and gas drawing entry card must be fully executed by the applicants and when they omit their address or the State in which the parcel of land to be leased is located, the lease offer is properly rejected.

Hartley L. Gordon and James A. List, 27 IBLA 317 (Oct. 29, 1976)

Hartley L. Gordon and James A. List, 32 IBLA 139 (Sept. 12, 1977)

Where a rubber stamp constitutes an offeror's signature on a simultaneous oil and gas lease entry card, the Bureau of Land Management need not presume that the offeror rather than an agent stamped the card, and where no agent's statement has been submitted, BLM may take appropriate action to establish the circumstances under which the signature was stamped on the card.

"Agent." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include an employee who has no discretionary authority and merely acts as the employer's amanuensis in affixing the employer's stamp on a simultaneous oil and gas lease offer entry card, even if it is done outside the actual physical presence of the employer. Any statement required by the Bureau of Land Management to establish the identity of the person who stamped the offeror's name on the card must allow the offeror to provide information to establish whether or not the person was an agent within the meaning of 43 CFR 3102.6-1; merely requiring the offeror to show the stamp was affixed by him or in his presence is not sufficient.

Evelyn Chambers, 27 IBLA 317 (Nov. 4, 1976) 83 I.D. 533

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp or other mechanical device to affix a signature to a drawing entry card, provided that it is the applicant's intention that the facsimile be his signature.

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue a noncompetitive oil and gas lease to anyone other than the first-qualified applicant. If a drawing entry card lease offer is signed by an agent or attorney-in-fact in behalf of the applicant, or if a facsimile signature of the applicant is affixed upon the offer by an agent or attorney-in-fact, the offer cannot be considered to have been submitted by a qualified applicant unless it is accompanied by the statements required by 43 CFR 3102.6-1.

William J. [illegible], 27 IBLA 330 (Nov. 4, 1976) 83 I.D. 538

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Failure to execute fully an oil and gas drawing entry card (by omitting the zip code) properly results in the rejection of the offer.

A drawing entry card oil and gas lease offer given first priority in a drawing in the simultaneous filing procedure creates no vested right to a lease in the offeror, but merely the right of having her offer considered first for the parcel described. If the drawing entry card is defective, it must be rejected.

Amy H. Hanthorn. 27 IBLA 369 (Nov. 4, 1976)

A simultaneous oil and gas drawing entry card must be fully executed by the applicant. When the applicant omits the zip code from his address on the card, the lease offer is properly rejected.

An applicant whose simultaneous oil and gas entry card is rejected because of a defect in his completion of the entry card cannot thereafter cure the defect by submitting a corrected entry card.

Raymond E. Baimer. 27 IBLA 373 (Nov. 4, 1976)

An offeror is properly disqualified from receiving a noncompetitive oil and gas lease on an offer which is drawn first from a group of simultaneously filed offers when he fails to pay the first year's advance rental within 15 days of his receipt of notice that such rental is due, and the delay is attributable to his posting of the rental check with insufficient postage.

Edgar C. Donnington, Jr. 28 IBLA 65 (Nov. 10, 1976)

A simultaneous oil and gas lease offer is properly rejected where the offeror, in preparing the drawing entry card, did not complete the date in the space provided for it on the card.

Robert J. Burkhall. 28 IBLA 76 (Nov. 12, 1976)

An oil and gas lease offer for lands in which the United States owns a fractional mineral interest which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is defective and such defect cannot be cured by the submission of further information.

Frank D. Wells. 28 IBLA 113 (Nov. 15, 1976)

Where it does not appear that the notice required by sec. 7(b) of the Privacy Act of 1974 regarding the disclosure of a social security number was given, an oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure should not be considered defective solely because the applicant omitted designating the social security number on the card as provided thereon.

Richard Lovett. 28 IBLA 244 (Dec. 10, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

The prohibition in 43 CFR 3112.2-1(a)(2) against the filing by a simultaneous drawing oil and gas lease applicant of more than one entry card for the same parcel is only concerned with entry cards filed by the same applicant which indicate the same parcel number as shown on the posted notice. Such entry cards must be rejected regardless whether the card is fully executed or correct in all respects.

Kathleen Griffith. 28 IBLA 295 (Dec. 29, 1976)

When a rubber stamp is used to affix a signature to a drawing entry card and no agent's statement has been submitted, a State Office of the Bureau of Land Management may take appropriate action to establish whether the applicant's signature was imprinted by him or at his request by an amanuensis and that he formulated the offer.

Mary E. Wiland, Elizabeth R. O'Connell. 28 IBLA 300 (Jan. 10, 1977)

Regardless of whether offeror is described as "*un*qualified" or "*dis*qualified," 43 CFR 3112.5-1 requires that upon successful drawees' failure to pay first year's rental, the lands shall be listed subsequently under the simultaneous drawing procedure rather than leased under the regular over-the-counter procedure in 43 CFR Subpart 3111.

Robert C. Leary. 28 IBLA 310 (Jan. 10, 1977)

Where, after a drawing of simultaneously filed oil and gas lease offers, the authorized officer mails a notice to the successful drawee informing him of his priority and the requirement that the advance rental must be paid within the allotted time, which letter is received at his address of record, his subsequent failure to remit the rental timely will disqualify his offer even though he asserts that the person who received and signed for the notice, and then failed to give it to him promptly, was not his designated agent for receipt of mail.

After a drawing of simultaneously filed oil and gas lease offers the requirement that the first year's rental be received in the proper office within the allotted time after notice to the applicant is mandatory, and consideration of excuses for failure to comply is not permitted. Specifically, no relief will be afforded where the delay is attributed to the Postal Service.

Edgar C. Donnington (On Reconsideration). 28 IBLA 355 (Jan. 31, 1977)

An unsigned drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected.

Melvin C. Purser. 28 IBLA 359 (Feb. 1, 1977)

"Agent." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include a son who has no discretionary authority and merely acts as his mother's amanuensis in affixing her signature on a simultaneous oil and gas lease offer entry card. Therefore, no further statement is required by the Bureau of Land Management to establish whether

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

or not the son was an agent within the meaning of 43 CFR 3102.6-1.

Rebecca J. Waters, 28 IBLA 381 (Feb. 4, 1977)

A successful simultaneously filed oil and gas lease entry card is not to be rejected because the card is signed prior to the date of the beginning of the simultaneous filing period unless it is dated more than 10 days prior to the date it is filed.

Kathryn J. Eckles, Harley L. Williamson, 28 IBLA 390 (Feb. 4, 1977)

Where an applicant fails to date a simultaneous oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and his lease offer is properly rejected.

Thomas V. Gullo & Joseph L. Sandazzo, 29 IBLA 126 (Feb. 23, 1977)

A simultaneous oil and gas lease offer is properly rejected when the offeror fails to execute fully the drawing entry card by not indentifying on the card the full designation of the parcel by both number and letter prefix.

E. Fenton Carey, 29 IBLA 196 (Mar. 21, 1977)

An offer for an oil and gas lease filed on a simultaneous drawing entry card must be rejected when the offeror has failed to indicate the date he signed the card.

Earl Thompson, 29 IBLA 218 (Mar. 22, 1977)

The fact that the addresses of the lease offeree and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

The burden is on the protestant to prove by competent evidence an accusation that a filing service is filing offers on behalf of more than one offeror and that there is an enforceable agreement the filing service will participate in the proceeds of the lease. A mere offer to buy leases from a successful drawee does not violate the regulation prohibiting anyone from having a greater probability of success in a drawing or constitute an agreement giving an agent or broker an interest in the proceeds of a lease.

Harry L. Matthews, 29 IBLA 240 (Mar. 25, 1977)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a State prefix in the parcel number, the lease offer is properly rejected.

Where an applicant fails to include the State prefix of the parcel number on an oil and gas drawing entry card, he/she has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and such offer is properly rejected whether the defect is discovered before or after the drawing.

Ella C. Harris, 29 IBLA 259 (Mar. 25, 1977)

Gerald L. Christensen, Edward C. Green, 30 IBLA 303 (June 6, 1977)

Neither the filing of an over-the-counter oil and gas lease offer, nor the holding of a drawing of simultaneously filed offers to determine the first-qualified offeror, creates any right to a lease or any property rights in the offeror that diminish the Secretary's discretion whether or not to issue a noncompetitive oil and gas lease on a given tract.

James W. Canon et al., 1 SEC. 1 (Apr. 15, 1977) 84 I.D. 176

Except for establishing priority of filing, the drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror. If subsequent to the filing of a noncompetitive oil and gas lease offer and prior to issuance of a lease the land described therein is determined to be in a known geological structure of a producing oil or gas field, the noncompetitive lease offer must be rejected.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a State prefix in the parcel number, the lease offer is properly rejected.

John P. Lewycky, 30 IBLA 127 (May 12, 1977)

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

"Agent." The word "agent," as used in 43 CFR 3102.6-1, requiring statements of authority and disclosure of interests in oil and gas leases by agents, includes all persons or companies having discretionary authority to act on the offeror's behalf concerning the offer or lease.

D. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

The presence in a drawing of simultaneously filed noncompetitive oil and gas lease offers of several entry cards signed by different offerors bearing the common mailing address of a leasing service which has an agreement to pay the first year rental for the account of any successful offeror utilizing its services does not, in the absence of an enforceable agreement under which the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, establish an interest of the leasing service in the various lease offers constituting an improper multiple filing.

D. E. Pack, 30 IBLA 230 (May 26, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

In the absence of any irregularity connected with an offer, an oil and gas lease may be issued to an applicant who has stated that he personally stamped the drawing entry card with his facsimile signature.

Louis J. Boland, 30 IBLA 237 (May 27, 1977)

Louis J. Boland, 33 IBLA 269 (Jan. 5, 1978)

A simultaneous oil and gas lease offer is not fully executed and is properly rejected when the offeror fails to provide the full designation of the parcel by both number and letter prefix.

Ernest T. Squires, Teresita C. Squires, 30 IBLA 288 (June 1, 1977)

Where an oil and gas lease offer is signed by an agent on behalf of the offeror, the regulations with respect to qualifications of lessees require evidence of the authority of the agent and separate statements by the offeror and the agent regarding the nature and extent of any interest the agent has in the lease. The same requirement applies where the offeror's facsimile signature is affixed on the offer by an agent. An offer must be rejected where this information is not filed.

The Bureau of Land Management (BLM) has a responsibility to issue noncompetitive oil and gas leases only to the first-qualified offeror. A rubber-stamped or other form of facsimile signature, unlike a handwritten signature, does not give rise to a presumption that it was personally executed by the offeror. The BLM may inquire of the circumstances under which the signature was stamped on the offer to determine whether compliance with 43 CFR 3102.6-1 was required.

Charlotte L. Thornton, William M. Weaver, Jr., Robert L. Smith, 31 IBLA 3 (June 15, 1977)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party and the statements of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

Michael J. Madigan, Robert K. Raines, 31 IBLA 58 (June 23, 1977)

Reproduction of the franked postal drawing entry card is not authorized and offers filed on copies of such form must be rejected. An offer will not be rejected for this reason when an examination of several cards submitted by the same offerors fails to establish that the cards were reproductions.

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped or other facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply, and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

Ray H. Thames, 31 IBLA 167 (July 5, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A first-drawn simultaneous drawing entry card which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

Porcross Partners, 31 IBLA 181 (July 5, 1977)

A simultaneous drawing entry card which is filed with one name in the proper box for the name of the first offeror and a second name (that of offeror's husband) appears in the area below the space provided for the name of the second offeror as part of the first offeror's address and which is signed on the reverse by only the offeror is not prima facie defective and is not to be rejected as not "signed and fully executed," where the second name is not in proper order, is not supported by a social security number and the offeror and her husband state that he had no interest in the offer and that his name appeared on the address stamp which offeror used to place her address on the drawing entry card.

Bessie E. Landis, 31 IBLA 195 (July 6, 1977)

43 CFR Subpart 3112 renders invalid an over-the-counter oil and gas lease offer filed for lands in canceled or relinquished leases or leases which have terminated by operation of law, for such lands are subject to simultaneous offers only.

Robert S. Bickel, 31 IBLA 201 (July 6, 1977)

A simultaneous oil and gas offeror is properly disqualified under 43 CFR 3112.4-1 from receiving lease when she fails to pay the first year's rental within 15 days of receipt of the notice that such payment is due.

Where the check submitted in payment of the first year's rental for an oil and gas lease offer is dishonored by the drawee bank due to error on the part of the drawer, the offer is properly rejected in accordance with 43 CFR 3112.4-1.

Karen L. Brown, 31 IBLA 239 (July 12, 1977)

The fact that the addresses of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

E. R. Pack, 31 IBLA 283 (July 22, 1977)

A simultaneously filed oil and gas lease entry card is not to be rejected for the reason that the applicant signed the card and the parcel number was entered thereon subsequently by the applicant's employee, since the applicant, in signing the card, certifies as to all the requirements stated as of the date entered thereon, and agrees to be bound to a lease if the offer is successful.

Evelyn Chambers and Jerry Chambers, 31 IBLA 381 (Aug. 10, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where a drawing entry card sets out the names of two applicants but one applicant fails to sign the card, the card is not in compliance with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and the lease offer is properly rejected.

Fernando C. Santos, 32 IBLA 194 (Sept. 15, 1977)

A simultaneous oil and gas lease offer is properly rejected if it is unsigned or undated.

A signature on a drawing entry card cannot be imputed from a signature on another document.

When a first-drawn oil and gas lease offer is disqualified because it is unsigned or undated, the Department's equitable adjudication authority may not be invoked to divest the first-qualified drawee of his preference right to a lease.

One whose first-drawn oil and gas lease offer is disqualified because it is unsigned or undated cannot establish a right to a lease by showing that his failure to sign or date the card resulted from inadvertence, lack of knowledge, illness or other physical incapacity.

David L. Hansen, John L. Hurdle, John F. and Inez B. Cramer, 32 IBLA 272 (Sept. 27, 1977)

Where a check has been submitted with a drawing entry card in payment of the $10 filing fee for a simultaneous oil and gas lease offer, and the check is dishonored by the bank, the offeror loses his priority unless the refusal to honor the check was the result of a bank error, corroborated by the bank.

John Eldon Dean, 32 IBLA 336 (Oct. 18, 1977)

Jonathan T. Ames, 33 IBLA 1 (Nov. 14, 1977)

If a noncompetitive oil and gas lease is issued for a particular parcel of land, it must be issued to the first-qualified applicant. Under the simultaneous drawing procedures, a defective entry card must be rejected.

Failure to complete properly any information required on a simultaneous oil and gas lease drawing entry card renders the card defective and requires rejection of the offer based upon the mandatory requirements in 43 CFR 3112.2-1(a) that the card be "signed and fully executed." This requirement is strictly applied, and the omission of the day of the month from the date on the card renders the card defective.

Walter H. Sorensen, 32 IBLA 345 (Oct. 21, 1977)

Where an applicant incorrectly uses the wrong abbreviation for the State prefix of the parcel number on an oil and gas drawing entry card, she has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and her offer is properly rejected.

Marcia P. Lane, 33 IBLA 68 (Dec. 5, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas lease offer is properly rejected where the applicant fails to provide the exact date the offer was signed by omitting the year.

Violet Kern, 33 IBLA 150 (Dec. 19, 1977)

An unsigned and undated drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected, despite assertions of excusable neglect or inadvertence.

Edna R. McCree and Harry R. McCree, 33 IBLA 235 (Dec. 28, 1977)

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the president and/or the vice president of the corporation also filed applications for the same parcel of land in the same drawing as individuals, the offer of the corporation must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation and thereby increase its chances to be the successful applicant.

Graybill Terminals Co., 33 IBLA 243 (Jan. 5, 1978)

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Charles P. Ricci, 33 IBLA 288 (Jan. 5, 1978)

A simultaneously filed oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of corporate qualifications nor makes reference to a serial number of a record in which such statement had previously been filed, as required by 43 CFR 3102.4-1.

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by submission of further information.

A simultaneous oil and gas lease offer is properly rejected when the date is omitted from the drawing card.

A simultaneous oil and gas lease offer is properly rejected where the drawing card is not signed. Where a corporation submits a drawing card which is not signed by a corporate officer whose authority to sign is established by the procedure set out in 43 CFR 3102.4-1, the card is not "signed" within the meaning of 43 CFR 3112.2-1(a), and its offer must accordingly be rejected. Placing the corporation's name in script on the signature line does not constitute "signing" the card.

Anchors and Holes, Inc., 33 IBLA 339 (Jan. 16, 1978)

Where an oil and gas lease offer on a drawing entry card is signed by the offeror and lists the names of 10 other parties in interest, and is accompanied by a separate statement signed by each of the 11 parties in interest declaring (1) their respective addresses, (2) that they are American citizens, (3) that they had an oral agreement to participate in the lease, (4) that they would own equally, and (5) that they do not have

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

direct or indirect interests in leases which exceed 246,000 in any one State, the requirements of 43 CFR 3102.7 have been satisfied and the lease may issue, all else being regular.

Morris M. Cohen et al., 33 IBLA 365 (Jan. 23, 1978)

An oil and gas drawing entry card may not be rejected merely because it is signed by the applicant before the parcel number is entered on it by another.

Adam F. Zbilski, 34 IBLA 4 (Feb. 8, 1978)

An offeror whose drawing entry card is drawn with first priority for a parcel of land properly available at the time of posting is entitled to receive an oil and gas lease, all else being regular.

Jack L. McClellan, Marton Majoros, 34 IBLA 53 (Feb. 16, 1978)

An oil and gas lease drawing entry card is properly rejected where it contains incorrect information, in that the parcel number of the land applied for is misstated, notwithstanding the fact that the misstatement was the result of an inadvertent typographical error.

Amerada Hess Corp., 34 IBLA 64 (Feb. 17, 1978)

A simultaneous oil and gas lease drawing entry card containing an incorrect parcel number is properly rejected and the filing fee is properly retained by the Bureau of Land Management.

Henry A. Alker, 34 IBLA 136 (Mar. 8, 1978)

Where the Director, BLM, in a general instruction to all Bureau offices, has specified which kinds of discrepancies will result in the exclusion of drawing entry cards from a drawing of simultaneously filed oil and gas lease offers, and directs that all other cards are to be included in the drawings, the action of one field office to exclude certain other types of cards will be reversed as being in contravention of such directive.

The exclusion from the drawing of oil and gas drawing entry cards for trivial and inconsequential alterations which do not affect the appearance or feel of the cards in any significant way and which obviously were not intended to adversely affect the integrity of the drawing is arbitrary and capricious.

Margaret A. Ruggiero et al., 34 IBLA 171 (Mar. 14, 1978)

W. C. Yahnel, 34 IBLA 377 (May 1, 1978)

Where it is shown that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of the filing fee.

Charles P. Ricci (On Reconsideration), 34 IBLA 186 (Mar. 21, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent are submitted along with his offer card.

Where an offeror and his agent filing service submit statements along with a drawing entry card, which statements indicate unequivocally that there is no agreement between them creating an interest in the agent, thus apparently obviating the need to submit details of the offeror/agent agreement per 43 CFR 3102.6-1, BLM, in its discretion, may either decline to inquire further into the details of the agreement or may request and examine a copy of the agreement to determine whether such an "interest" in the agent existed at the time the offer was filed.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Virginia L. Jones, 34 IBLA 188 (Mar. 21, 1978)

Strict compliance with 43 CFR 3112.2-1, which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent, is required. Where no date of signing appears on an entry card, the offer is properly rejected.

Jack L. Macdowell, 34 IBLA 202 (Mar. 22, 1978)

John G. Keese, 37 IBLA 364 (Nov. 2, 1978)

Where it is first alleged on appeal that a first-drawn simultaneous oil and gas entry card has been rejected in order for the lease to be awarded to the offeree first drawn in a prior drawing, which prior drawing was void because of an omitted entry card, but the record as to the second drawing is incomplete and an affected party has not been given opportunity to participate, the case may be remanded for augmentation of the record and initial consideration by Bureau of Land Management.

W. J. Langley, 34 IBLA 213 (Mar. 27, 1978)

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer per 43 CFR 3112.5-2.

William B. Kosha, 34 IBLA 216 (Mar. 27, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A lease erroneously issued in violation of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property must be canceled if a lease is awarded to another applicant in a drawing held among the first and other offers simultaneously filed following repeal of the regulations.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

The Department of the Interior may only issue an oil and gas lease to the first-qualified applicant, and a drawing entry card offer is properly rejected where it lists a second party in interest who fails to file timely the statement required by 43 CFR 3102.7.

Roy M. Waer, Robert A. Griggs, 34 IBLA 237 (Mar. 28, 1978)

An entry card in a simultaneous oil and gas lease drawing need not be rejected where the card sets out in the parcel designation the complete name of the State in which the parcel is located instead of the abbreviation of the State name used as the State code prefix. All else being regular, such an entry card is fully executed.

Clayton Chessman, 34 IBLA 263 (Mar. 31, 1978)

Douglas Steele, 34 IBLA 344 (Apr. 26, 1978)

J. C. Davis, 35 IBLA 92 (May 12, 1978)

Where an attorney-in-fact or an agent does not sign the drawing card which is signed by the offeror, the showings as to the agent embodied in 43 CFR 3102.6-1 need not be submitted.

Elias C. Bacil, 34 IBLA 322 (Apr. 24, 1978)

A simultaneous oil and gas drawing entry card must be fully executed by the applicant, and when the State prefix to the parcel number is omitted, the lease offer is properly rejected.

Richard Wheeler, Jr., 34 IBLA 359 (May 1, 1978)

Offeror's failure to enter postal zip code of his address on entry card for simultaneous oil and gas lease drawing properly results in BLM's rejecting his offer. Such omission contradicts requirement in 43 CFR 3112.2-1(a) that entry card be "fully executed."

William K. DuKate, 35 IBLA 51 (May 9, 1978)

Where an attorney-in-fact or an agent does not sign the drawing card, the showings as to the agent embodied in 43 CFR 3102.6-1 need not be submitted.

Elias C. Bacil, 35 IBLA 198 (May 24, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An over-the-counter oil and gas lease offer filed for land formerly embraced in an oil and gas lease which has expired by operation of law, which land has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112, must be rejected.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification may not be avoided by allegations that delivery was delayed by the postal service, as the rule is that the postal authorities are the agents of the sender in such cases.

Where BLM records show that the first-drawn applicant for an oil and gas lease paid his rental 1 day late, and is therefore disqualified, there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Where a first-drawn oil and gas applicant offers evidence to show that his first year's advance rental was mailed sufficiently in advance so that, even if delayed, it would have arrived within the prescribed time, a legal presumption is raised that the payment was timely delivered.

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches *eo instante*.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

The mere use of a filing service's address on a simultaneous oil and gas lease drawing entry card does not constitute a violation of the applicable statutes or of any Departmental regulations, is not otherwise impermissible and is not a ground for rejecting the card.

Marion Bacil, 35 IBLA 366 (June 23, 1978)

Where the Director of the Bureau of Land Management issues a general instruction to all BLM offices specifying which kinds of discrepancies will result in the exclusion of drawing entry cards from a drawing of simultaneously filed oil and gas lease offers and directing that all other cards are to be included in the drawings, the action of one field office to exclude certain other types of cards will be reversed as being in contravention of such directive.

The exclusion of drawing entry cards from a simultaneous oil and gas lease drawing for trivial and inconsequential alterations which do not affect the appearance or feel of the cards in any significant way and which obviously were not intended to adversely affect the integrity of the drawing is arbitrary and capricious.

It is arbitrary and capricious for a BLM State Office to reject a drawing entry card, drawn with first priority, because of trivial corrections on the card by means of an opaque "white-out" liquid which does not affect the appearance or feel of the card in any significant way and which corrections obviously were not

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

intended to adversely affect the integrity of the drawing.

Raymond A. Perry et al., 35 IBLA 386 (June 27, 1978)

Where a drawing entry card is signed by an attorney-in-fact or agent on behalf of the applicant, the offer cannot be considered to have been submitted by a qualified applicant unless accompanied by a statement evidencing that the attorney-in-fact's authority is still in effect, as required by 43 CFR 3102.6-1.

Energy Reserves Group, Inc., 36 IBLA 57 (June 30, 1978)

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, the burden is on a protestant attacking the validity of the offer to prove an accusation that there is an agreement giving the filing service an enforceable interest in the lease to be issued.

Clyde E. Frazier, 36 IBLA 141 (July 25, 1978)

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

Bruce E. Watkins, 36 IBLA 168 (July 31, 1978)

Unsigned and undated drawing entry cards filed in the simultaneous oil and gas leasing drawings must be rejected. An oil and gas lease offer is not accepted by the United States until a lease is executed and signed by the appropriate officer.

S. Duff Kerr, 36 IBLA 199 (Aug. 3, 1978)

It is proper to reject a drawing entry card lease offer, given first priority at a drawing, where the name of the offeror is affixed to the card by means of an address label, instead of being inserted in the appropriate spaces of the card in this order: last name, first name, middle initial.

Irving D. Brick, 36 IBLA 235 (Aug. 8, 1978)

A simultaneously filed offer to lease for oil and gas is properly rejected where the offeror fails to complete the drawing entry card by filling in the name of the State in which he resides.

Sam Powell, 36 IBLA 273 (Aug. 21, 1978)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and where the applicant omits from her address, the State and zip code, the lease offer is properly rejected.

Rita D. Vick, 36 IBLA 275 (Aug. 21, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas drawing entry card must be fully executed by the applicants and when they omit their address, the lease offer is properly rejected notwithstanding assertions of excusable neglect or inadvertence.

Burton A. Rykken et al., 36 IBLA 277 (Aug. 21, 1978)

Unsigned and undated drawing entry cards filed in the simultaneous oil and gas leasing drawings must be rejected. The calling out of the No. 1 drawee's name does not constitute acceptance of the offer. Acceptance of the offer cannot accrue until the lease itself has been executed by the appropriate official of the Government.

S. Duff Kerr, 36 IBLA 302 (Aug. 21, 1978)

Darrell J. Sekin, 40 IBLA 156 (Mar. 30, 1979)

When the president of a corporation is the successful offeror in a drawing of simultaneous oil and gas lease offers and the vice president and the corporation also file applications for the same parcel of land in the same drawing, the president's offer must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation, thereby increasing its chances to be the successful applicant under 43 CFR 3112.5-2.

William R. Bobbe, 36 IBLA 346 (Aug. 28, 1978)

The mere use by an offeror of a filing service's address on a drawing entry card does not violate any applicable statute or regulation and, therefore, is not a ground for rejecting the card.

A handwritten signature is presumed to be written by the person named. Where an attorney-in-fact or an agent does not sign a drawing entry card, the provisions of 43 CFR 3102.6-1 are not invoked.

The burden is on the protestant to prove by competent evidence justification for the disqualification of the successful drawee in an oil and gas lease offer simultaneous filing. Mere allegations are insufficient.

William Miller, 36 IBLA 349 (Aug. 28, 1978)

When a person files two oil and gas lease offers for a single parcel in the simultaneous oil and gas leasing procedure, one as a joint applicant with the spouse and another as the sole applicant, the applicable regulation, 43 CFR 3112.2-1(a)(2), requires rejection of both offers regardless of whether there was any intent to file more than one offer or to profit from any multiple filing.

Robert Hickman, et ux., 36 IBLA 353 (Aug. 28, 1978)

A simultaneously filed oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of qualifications nor makes reference to a serial number of a record in which such statement has previously been filed, as required by 43 CFR 3102.4-1.

NTL Investment Corp., 36 IBLA 355 (Aug. 31, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

The fact that the addresses of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not thereby disqualify the offer.

Dexter B. Spalding, 37 IBLA 4 (Sept. 6, 1978)

The burden is on a protestant to show, as justification for the disqualification of the successful drawee in a simultaneous filing drawing procedure, that the offer is in fact defective. A suggestion of the possibility of violation of a regulation is not sufficient; a protestant must present competent proof of such violation. Absent an adequate showing of disqualification, a protest alleging disqualification is properly rejected.

Lillian Sweet, 37 IBLA 25 (Sept. 14, 1978)

Established and longstanding Departmental policy relating to the administration of the simultaneous oil and gas leasing system is binding on all employees of the Bureau of Land Management, until such time as it is properly changed.

The simultaneous drawing system presupposes that each properly filed offer be afforded the same opportunity for priority consideration. This requires that when drawing entry cards are improperly omitted from a drawing, the first drawing be considered as void, and priorities established at a second drawing, in which all entry cards are included, shall control consideration for the oil and gas lease.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39 (Sept. 18, 1978) 85 I.D. 380

A first-drawn simultaneous oil and gas lease offer filed by a partnership which is signed by one agent where the partnership agreement authorizes two or more agents, jointly, to file simultaneous oil and gas lease offers, is not signed by an "authorized" agent, as required by 43 CFR 3112.2-1(a), and must be rejected. A grant of authority to "A and B," without more, will be deemed to create a joint agency.

SID Partnership, 37 IBLA 165 (Oct. 10, 1978)

A simultaneously filed oil and gas lease offer listing the name of an individual and a corporation as applicants, on the front of the card and also on reverse signature side, is properly rejected where no statement of qualifications or corporate reference number accompanies the card as required by 43 CFR 3102.4-1. This defect cannot be cured after the drawing by the individual's subsequently filing a statement that the corporation has no interest in the offer, and was merely designated for address purposes only.

George E. Mattison, 37 IBLA 193 (Oct. 11, 1978)

When a married woman signs her name, "Mrs. Hal McCarthy," as offeror on a drawing entry card oil and gas lease offer, and prints her full name "Geraldine M. McCarthy" on the face of the card, the card may not be rejected because she violated no regulation by signing the offer in that manner, and she followed the instructions on the face of the card by giving her first name and initial.

Geraldine M. McCarthy, 37 IBLA 323 (Oct. 25, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

I. E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 5, 1978) 85 I.D. 408

Gertrude H. D'Amico, 39 IBLA 68 (Jan. 17, 1979)

E. D. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

J. A. Masek, 40 IBLA 123 (Mar. 27, 1979)

Blanche V. White, 40 IBLA 152 (Mar. 30, 1979)

Bernard Evans, 43 IBLA 292 (Oct. 17, 1979)

A drawing entry card which is not dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected, notwithstanding an allegation that the date of signing might have been deduced from a check accompanying the offer or from the postmark of the envelope in which the offer was submitted.

Theodore R. Kuhn, 38 IBLA 135 (Nov. 29, 1978)

Ronald Miller, 40 IBLA 193 (Apr. 5, 1979)

Ronald Miller, 43 IBLA 4 (Sept. 11, 1979)

"Interest." Where a partner in a firm, or business associate, or an officer of a corporation which is engaged in the oil and gas business, files an oil and gas lease offer individually in his own name, the partnership/ corporation/association may have a claim to any benefits accruing to the individual from the lease, owing to the partnership agreement, corporate by-laws, or personal contract, due to the partner's/officer's/ associate's fiduciary duty to hold any opportunity obtained individually for the exclusive use and benefit of the firm. This claim is an "interest" under 43 CFR 3100.0-5(b), and failure to disclose it within 15 days of the filing of the offer, as required by 43 CFR 3102.7, subjects the offer to rejection.

Where an oil and gas lease offeror has indicated that he is the sole party in interest in the offer, but a protestant shows that he is a member of a firm which bears his name and the name of another, that the firm is engaged in the oil business, and that the address of record on the lease offer is the address of the business firm, the case will be remanded for an investigation to ascertain if there has been a violation of 43 CFR 3102.7 and/or 43 CFR 3112.5-2.

Johnnie B. Gryder, 38 IBLA 146 (Dec. 5, 1978)

Even though a power of attorney has been filed with the State Office of the Bureau of Land Management and reference to this was included on a simultaneously filed oil and gas lease drawing entry card, the regulations require that the attorney-in-fact or agent file two additional statements along with the card: first, a statement that his authority is still in effect as

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

required by 43 CFR 3102.6-1(a)(1), and second, a statement by the attorney-in-fact or agent about his agreement with the offeror and any interest in the lease pursuant to 43 CFR 3102.6-1(a)(2).

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. A first-drawn drawing entry card oil and gas lease offer signed by an agent but which is not accompanied by the statements required by regulation must be rejected because the offeror is not the first-qualified applicant.

Cotton Petroleum Corp., 38 IBLA 271 (Dec. 13, 1978)

Where eight individuals enter into a single agreement with a leasing service whereby the service supplies parcel numbers, and the eight individuals file offers on two of these parcels and pay all their filing fees by a single check, there is a strong implication that each of the individuals has an interest in all of the offers filed on these parcels. Where one of these individuals, whose offer has resulted in the issuance of a lease, fails to respond to an order by this Board directing him to submit details of the agreement between himself and the other individuals by which to determine whether the requirements of 43 CFR 3102.6-1 and 3112.5-2 have been violated, it will be presumed that the indicated violations have occurred, and the cancellation of the lease will be affirmed on that basis.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

A protest against the issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of impropriety in a relationship between a leasing service and its client and is unsupported by facts showing that the successful drawee should have been disqualified, as the protestant has failed to meet his burden of showing with competent evidence that there has been a violation of applicable regulations which would disqualify the offer.

Geosearch, Inc., 39 IBLA 49 (Jan. 16, 1979)

Geosearch, Inc., 40 IBLA 267 (Apr. 18, 1979)

Under 43 CFR 3112.1-2, if an offeror wishes to participate in a simultaneous drawing procedure, the drawing entry card must be received in the local Bureau of Land Management office within the time allotted therefor.

Bertram F. Rudolph, Jr., 39 IBLA 78 (Jan. 24, 1979)

Where the Director, Bureau of Land Management, has specified which kinds of discrepancies will result in the exclusion of drawing entry cards from a drawing of simultaneously filed oil and gas lease offers, and directs that all other cards are to be included in the drawings, the action of one field office to exclude certain other types of cards will be reversed as being in contravention of such directive.

Oil and gas drawing entry cards may not be excluded from a drawing for trivial and inconsequential alterations which do not affect the appearance or feel of the cards in any significant way and which were not intended to adversely affect the integrity of the drawing.

Helen E. Serencha, 39 IBLA 318 (Feb. 23, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Under 30 U.S.C. § 226 (1976), the Department has no authority to issue an oil and gas lease to other than the first-qualified applicant, and if an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been timely filed.

Where a rubber stamp is used to imprint an applicant's signature, and where no agent's statement has been submitted under 43 CFR 3102.6-1, a State Office may take appropriate action to establish whether the applicant's signature was imprinted at his request and whether he formulated the offer.

William L. Hogge, Jr., 39 IBLA 332 (Feb. 27, 1979)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured after the drawing is held.

Elizabeth Fagedas (On Reconsideration), 40 IBLA 23 (Mar. 9, 1979)

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer. A leasing service bound by a "put option" does not have a hidden interest in the offer and does not violate 43 CFR 3102.7 by failing to disclose this put option or 43 CFR 3112.5-2 by filing offers for more than one client on a parcel.

C. E. Pack, 40 IBLA 45 (Mar. 15, 1979)

Where a drawing entry card is submitted in a simultaneous oil and gas lease drawing and signed by multiple offerors, the offer is properly rejected if even a single offeror fails to enter the date of his signature on the drawing entry card.

The requirement set forth in 43 CFR 3112.2-1(a) (1977) that a drawing entry card be fully executed is not vague or unclear. Hence, a DEC signed by multiple offerors is properly rejected if even a single offeror fails to enter the date on the drawing entry card.

The date of each signature on a drawing entry card is important, because it shows that on that particular date, the offerors, by their respective signatures, certify, as to each, all the statements made on the card.

Thomas B. Flickinger, William S. Flickinger, et al., 40 IBLA 53 (Mar. 16, 1979)

An entry card in a simultaneous oil and gas lease drawing need not be rejected under 43 CFR 3112.2-1(a) where the State prefix of the parcel number is placed on the card immediately below the boxes provided for designation of the parcel number.

L. Alice Collister, 40 IBLA 71 (Mar. 16, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

The first-drawn entry card of a corporation which has failed to comply with the regulations governing qualifications must be rejected.

University of the Trees, 40 IBLA 78 (Mar. 16, 1979)

Where, in a drawing of simultaneously filed noncompetitive oil and gas lease offers, an offer is filed by a trustee on behalf of a minor child, and another offer for the same land is filed by the parent of that child, and the parent has an interest in the child's offer, this interest effectively gives the parent greater chances of success in the drawing and is inherently unfair, regardless of whether there has been collusion or intent to deceive the Department.

Where separate trusts are created for siblings, and the trust agreements provide for a contingent distribution of the assets from the estate of one or more trusts of decedents into the trust estates of the survivors, each of the beneficiaries of the separate trusts has an "interest" in any oil and gas lease or offer as that term is defined in 43 CFR 3100.0-5(b), and the simultaneous filing of lease offers by more than one such trust for the same parcel is therefore violative of the regulation which prohibits the filing of multiple offers. 43 CFR 3112.5-2.

Farrell L. Lines (Trustee) and Winston Trust, 40 IBLA 91 (Mar. 27, 1979)

A drawing entry card in a simultaneous oil and gas lease filing need not be rejected where the card sets out as part of the parcel designation the complete name of the State in which the parcel is located instead of the abbreviated State code prefix.

Ed Pendleton, 40 IBLA 103 (Mar. 27, 1979)

Established and longstanding Departmental policy relating to the administration of the simultaneous oil and gas leasing system, premised upon regulatory interpretation, is binding on all employees of the Bureau of Land Management, until such time as it is properly changed.

The essential requirement of the simultaneous oil and gas leasing system is that all properly filed offers be afforded equal opportunity to obtain a lease. Where a system effectively excludes a lease offer from consideration, such a system is arbitrary and capricious.

Milton D. Feinberg, Benson L. Lamp (On Reconsideration), 40 IBLA 222 (Apr. 11, 1979) 86 I.D. 234

Where a drawing entry card is submitted in a simultaneous oil and gas lease drawing and signed by multiple offerors, the offer is properly rejected if even a single offeror fails to enter the date of his signature on the drawing entry card.

The requirement set forth in 43 CFR 3112.2-1(a) that a drawing entry card be fully executed is not vague or unclear. Hence, a DEC signed by multiple offerors is properly rejected if even a single offeror fails to enter the date on the drawing entry card.

Pamela W. Kay, Henry H. Greer, Gregory Montgomery, Franklin J. Sands, 40 IBLA 240 (Apr. 16, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where a drawing entry card offer to lease is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

L. R. Dunn, 40 IBLA 335 (May 8, 1979)

The fact that the addresses of an oil and gas lease offeror and a filing service are identical does not disqualify the offer or afford the offeror or filing service a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

Where there is no evidence in the record that the offeror with first priority in a simultaneous oil and gas lease drawing is not the sole party in interest, a protest alleging an interest in a filing service may properly be dismissed.

Joseph J. O'Keefe, 40 IBLA 378 (May 14, 1979)

Where BLM does not reject simultaneous noncompetitive oil and gas lease offers drawn with second priority after the issuance of the leases to the first drawees, the second drawees retain an interest which must be considered if the leases are canceled because the first drawees' offers are defective, provided that the leases have not been assigned to bona fide purchasers. In those circumstances, BLM's decision dismissing the second drawees' protests against the continued validity of these leases for lack of interest must be vacated.

Geosearch, Inc., 40 IBLA 397 (May 14, 1979)

Geosearch, Inc., 41 IBLA 291 (June 28, 1979)

When a person files two oil and gas lease offers for a single parcel in the simultaneous oil and gas leasing procedure, as a joint applicant with the spouse, the applicable regulation, 43 CFR 3112.2-1(a)(2), requires rejection of both offers, regardless of the order in which the names of the two spouses are listed on the two cards.

Maurine L. and Howard R. Pettibon, 41 IBLA 23 (May 22, 1979)

Where separate statements of interest are required pursuant to 43 CFR 3102.6-1(a)(2) (1977), this Board must affirm the dismissal of a protest against the issuance of an oil and gas lease which is premised on the protestant's contention that the statement of the offeror must bear his original, holographic signature.

Although a lease offer may not be rejected solely because an agent affixed the offeror's facsimile signature to the offeror's separate statement, this does not prevent BLM from requiring that the offeror personally verify the information contained therein and provide whatever supplemental information may reasonably be required. A private agent may not interpose himself between a lease applicant and the Government

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

so as to mask the identity of the applicant and prevent direct contact by Federal officials who are properly concerned.

W. H. Gilmore, 41 IBLA 25 (May 29, 1979)

It is not proper to reject a drawing entry card oil and gas lease offer solely because an agent affixed the offeror's facsimile signature to both the DEC and to the offeror's separate statement required by 43 CFR 3102.6-1, as BLM may require that the offeror personally verify the information contained in the offer and in the statement, and provide whatever supplemental information that BLM may reasonably require.

Where a drawing entry card is submitted in a simultaneous oil and gas lease drawing and is signed by multiple offerors, the offer is properly rejected if even a single offeror fails to enter the date of his signature on the drawing entry card.

Robert E. Coen et al., 41 IBLA 55 (May 31, 1979)

Strict compliance with 43 CFR 3112.2-1 which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent is required.

A simultaneous oil and gas lease offer is properly rejected where the State prefix to the parcel number on an oil and gas drawing entry card is omitted.

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not dated.

C. E. Coster Gerard, 41 IBLA 74 (May 31, 1979)

Strict compliance with 43 CFR 3112.2-1, which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent, is required. Where no date of signing appears on an entry card, the offer is properly rejected.

The burden of signing and fully executing a drawing entry card rests on the applicant. Reliance on instructions provided by a non-governmental filing service does not excuse the failure to fully execute a card.

Walter D. Moore, Jr., 41 IBLA 95 (June 4, 1979)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification, stemming from failure to pay timely, will not be avoided by allegations that payment was mailed far enough in advance to arrive at BLM timely.

American Petrofina Co. of Texas, 41 IBLA 126 (June 13, 1979)

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent, such statements bearing a facsimile signature, are submitted along with his offer card.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b). A leasing service, which files a simultaneous noncompetitive oil and gas lease offer drawing entry card on behalf of its client, bound by a "put option" does not have a hidden interest in the offer and does not violate 43 CFR 3102.7 by failing to disclose this put option or 43 CFR 3112.5-2 by filing offers for more than one client on a parcel.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to present evidence of an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

Jack Mask, 41 IBLA 147 (June 18, 1979)

Kelley Everetts, 41 IBLA 155 (June 18, 1979)

A decision by BLM rejecting a noncompetitive oil and gas lease drawing entry card offer because someone other than the offeror affixed a facsimile of the offeror's signature on the card and agency statements were not filed as required by 43 CFR 3102.6-1 will be vacated where BLM bases its finding to this effect on a statement made by the offeror 6 months previously concerning the preparation of other, earlier offers, and where the offeror alleges on appeal that she actually affixed the facsimile herself on the offer in question.

Miriam Feizman (Barrett), 41 IBLA 166 (June 18, 1979)

A handwritten signature may be presumed to be written by the person named. Where an attorney-in-fact or an agent does not sign a drawing entry card, the provisions of 43 CFR 3102.6-1 are not invoked.

The fact that the addresses of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

Where there is no evidence of any violation of the regulations in the record, the burden is on the protestant to submit competent evidence of an accusation that there is an agreement giving a filing service an enforceable interest in the lease, absent which the protest is properly rejected. Allegations that there was a contract between the offeror and a filing service in which the filing service withholds an overriding royalty interest from the offeror and participates in the proceeds, without evidence, is not sufficient to show that the offeror was not a sole party in interest.

Where the purchaser of an oil and gas lease asserts that he purchased the lease from the offeror whose drawing entry card was drawn with first priority, for cash consideration without knowledge of any irregularities or violation of the regulations, he is considered

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

to be a bona fide purchaser, and his lease is not subject to cancellation unless prima facie evidence is presented to the contrary.

J. Theodore Ellis, D. E. Pack, 41 IBLA 231 (June 27, 1979)

Where oil and gas lease offerors enclose agency statements with their drawing entry cards, which statements are clearly intended to, and appear to, apply to their offers, their cards are fully executed notwithstanding their failure to note on the face of the cards that the agency statements are enclosed, as nothing in the regulations or on the card directs an offeror to do so.

Nothing in the regulations requires an agency statement submitted under 43 CFR 3102.6-1(a) to be dated. Rather, the statement is an adjunct to the drawing entry card and is considered dated as of the signing and dating of the card.

An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed. Rather, such statements may be submitted over facsimile signatures.

Frederick T. Peters et al., 41 IBLA 262 (June 28, 1979)

It is proper to reject a drawing entry card lease offer, given first priority at a drawing, where the name of the offeror is affixed to the card first name, middle initial, last name, not in the appropriate spaces, by means of a rubber stamp, instead of being inserted in the appropriate spaces of the card in this order: last name, first name, middle initial.

Gordon M. Blair, 41 IBLA 288 (June 28, 1979)

When an offer for a noncompetitive oil and gas lease is submitted by the trustee of a discretionary trust and an offer for the same parcel is submitted by the beneficiary of that trust, a multiple filing has occurred contrary to 43 CFR 3112.5-2 (1978). The "agreement, scheme, or plan" specified by this regulation need not exist between the trustee and the beneficiary of the trust. A plan or agreement, such as the provisions of a trust, whose purpose is to benefit a third party is sufficient to come within the meaning of the regulation.

James H. Turner (Trustee), Sara Ann Lawrence Trust, 41 IBLA 360 (July 20, 1979)

A first-drawn entry card creates no vested right therein; the offeror gains merely a right of priority in consideration. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all mandatory regulations.

Harry A. Zuckerman et al., 41 IBLA 372 (July 23, 1979)

Where offers for the same parcel of land are filed by two corporations in a simultaneous oil and gas lease drawing, and where the directors of the first corporation having authority to file offers and execute leases are directors of the second with the same authority and the surrounding circumstances suggest that the corporations are interrelated, the drawing is inherently unfair and the offers are properly rejected as a prohibited multiple filing. Collusion or intent to deceive the Department need not be shown.

June Oil and Gas, Inc., Cook Oil and Gas, Inc., 41 IBLA 394 (July 24, 1979) 86 I.D. 374

An oil and gas lease may be awarded to the first-qualified applicant only. The regulations governing qualifications are mandatory, and strict compliance therewith is required.

A defective drawing card offer for an oil and gas lease is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second- and third-drawn qualified offerors have intervened. Where appellant's offer was third drawn and eventually accorded priority and then ultimately disqualified, the parcel described therein must be included in a subsequent list of lands available for simultaneous filing.

Don C. Bell II (Trustee), 42 IBLA 21 (July 25, 1979)

Where an offeror submits two drawing entry cards on a parcel, both cards are properly disqualified. It is irrelevant that there was actually only one card in the drawing due to BLM's rejection of the other, before the drawing, as defective for another reason, as it is the submission of more than one card per parcel which is prohibited under 43 CFR 3112.2-1(a)(2).

Mae B. Colvin, 42 IBLA 266 (Aug. 27, 1979)

43 CFR 3112.2-1 requires that simultaneous oil and gas drawing entry cards (DEC's) be "signed and fully executed" by the applicant or his agent which includes identifying the leasing units on the DEC's by correct parcel number. Strict compliance with the regulation is necessary and offers will be rejected where the applicant omits leading zeros from the parcel numbers on his DEC's.

Bertram F. Rudolph, Jr., 42 IBLA 310 (Aug. 29, 1979)

A drawing entry card which is not dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected.

Donald E. Bonington, 42 IBLA 380 (Sept. 11, 1979)

A simultaneously filed drawing entry card which is first drawn is properly rejected where the corporate offeror has improperly referred to the serial number where its statement of corporate qualifications was on file by omitting the letter prefix which showed which State Office had custody of the prior-filed statement of qualifications.

BLM personnel may not attempt to "correct," complete, or interpret entries on oil and gas lease offer application forms in such a way as to perfect an otherwise unacceptable application, nor may an applicant "cure" a defect on his drawing entry card by the submission of supplemental information after the drawing.

Resources Exploration & Mining, Inc. (On Reconsideration), 43 IBLA 89 (Sept. 19, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

It is not proper to reject a drawing entry card oil and gas lease offer solely because an agent affixed the offeror's facsimile signature to both the DEC and to the offeror's separate statement required by 43 CFR 3102.6-1, as BLM may require that the offeror personally verify the information contained in the offer and in the statement, and provide whatever supplemental information that BLM may reasonably request. An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed.

Frances B. Dunn et al., 43 IBLA 242 (Oct. 10, 1979)

An offeror's use of a leasing service address on a drawing entry card, of itself, does not disqualify the offer.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to present competent evidence supporting the accusation that there is an agreement giving the agent an enforceable interest in the lease to be issued. In absence of such evidence, the protest is properly rejected.

Alice M. Hardy, 44 IBLA 5 (Nov. 6, 1979)

In the absence of a regulatory requirement, it is not proper to reject a drawing entry card oil and gas lease offer solely because an agent afixed the offeror's facsimile signature to the DEC and the separate statements of the offeror and the agent submitted in satisfaction of 43 CFR 3102.6-1 are machine copies, as BLM may require that the offeror personally verify the information contained in the offer and the statement, and provide whatever supplemental information that BLM may reasonably request. An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed.

Nothing in the regulations requires an agency statement submitted under 43 CFR 3102.6-1(a) to be dated. The statement is an adjunct to the drawing entry card and is considered dated as of the signing and dating of the card.

Lewis W. Peters, 44 IBLA 35 (Nov. 6, 1979)

"Interest in an oil and gas lease or offer." If an oil and gas lease offeror in an oral agreement gives another person "a claim or any prospective or future claim to an advantage or benefit from a lease," there would be an interest in the lease or lease offer which must be disclosed under 43 CFR 3102.7. That an offeror might raise a technical legal defense against enforcement of such an agreement in a court does not militate against there being a claim or avoid the consequence of the disclosure regulation or 43 CFR 3112.5-2 prohibiting multiple filing in drawing procedures.

"Interest in an oil and gas lease or offer." Where affidavits submitted on appeal by an oil and gas lease offeror disclose that prior to the filing of an oil and gas lease offer the offeror orally agreed to give the person filing the offer for him either the opportunity to refuse to purchase the lease under terms and conditions that a third party would make (right of first refusal), or the opportunity to make the first offer before any other offer would be accepted (first right to buy), the offeror has given the person an interest in the offer as defined in the regulations to include

a prospective claim to an advantage or benefit from a lease.

R. J. Engvoldsen, 44 IBLA 70 (Nov. 20, 1979)
86 I.D. 683

When an offeror prints his name on the front of a drawing entry card oil and gas lease offer as "Maddox, Robert J.," and signs his name on the back of the card as "J. Robert Maddox," his usual manner of signing, the card may not be rejected because he violated no regulation by signing the offer in that manner, and he properly followed instructions on the face of the card by giving his last name first, then his first name and initial.

Robert J. Maddox, 44 IBLA 178 (Nov. 30, 1979)

When, in a drawing of simultaneously filed noncompetitive oil and gas lease offers, an offer is filed by a parent as cotrustee on behalf of a minor child, and another offer for the same land is filed by the parent individually, under 43 CFR 3100.0-5(b) the parent has an interest in the child's offer where trust proceeds may be used for support of the child, and the offers must be rejected. 43 CFR 3112.5-2.

Where a cotrustee files individually in a simultaneous filing of oil and gas lease offers for the same parcel on which she files as cotrustee for the trust, both offers must be rejected under the regulation which prohibits the filing of multiple offers. 43 CFR 3112.5-2.

Celeste C. Grynberg, Jean G. Smirnoff, 44 IBLA 197 (Nov. 30, 1979)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and where the applicant omits from his address, the State and zip code, the lease offer is properly rejected.

A simultaneous oil and gas lease drawing entry card omitting the State and zip code from the offeror's address is properly rejected and the filing fee is properly retained by the Bureau of Land Management.

Robert C. Meredith, 44 IBLA 213 (Dec. 11, 1979)

A drawing entry card in a simultaneous oil and gas lease filing may not be rejected on the basis that the card sets out as part of the parcel designation the complete name of the State where the governing office of BLM is located instead of the abbreviated State code prefix.

Joe L. Frazier, 44 IBLA 233 (Dec. 11, 1979)

A drawing entry card which does not contain the full designation of the parcel applied for, including the alphabetical State Office code as prefix, is not fully executed and must be rejected.

Lee M. Messinger, 44 IBLA 236 (Dec. 11, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected.

Lawrence T. Loftus et al., 44 IBLA 243 (Dec. 13, 1979)

A simultaneous oil and gas lease offer signed in the name of a trust must strictly comply with 43 CFR 3102.5, governing the submission of qualifying statements as a trustee.

A person filing a simultaneous offer for an oil and gas lease is presumed to understand the difference between a filing in the name of a trust and a filing in an individual capacity, and despite an allegation that the trust filing was instructed by unspecified Bureau of Land Management personnel, the principles of estoppel may not be invoked to change a defective trust filing into a filing by an individual.

Tony C. Nielsen, 44 IBLA 259 (Dec. 19, 1979)

Where two of three offerors sign a drawing entry card (DEC) in one of two signature boxes, and the third offeror signs in the other signature box provided on Form 3112-1, and the same date of signing is entered in each of the two appropriate boxes on the DEC for the date, adjacent to the two signature boxes, so that it is evident that the date applies equally to all three signatures on the card, the failure to enter a third date on the offer is not grounds for rejection of the DEC.

Eugene S. Bibbik et al., 44 IBLA 318 (Dec. 31, 1979)

Filing

No law or regulation requires the mandatory rejection of an oil and gas lease offer merely because it is held in suspense for 1 year. The setting of a specific time limit on the suspension of an oil and gas offer is not a determination in the exercise of the Secretary's discretionary authority of whether or not to lease the lands for oil and gas.

Justheim Petroleum Co., 18 IBLA 423 (Feb. 13, 1975)

In a noncompetitive oil and gas lease offer for acquired lands in which the United States owns a fractional present interest, 43 CFR 3130.4-4 requires offeror to submit a statement detailing the extent of his ownership in operating rights not owned by United States, regardless of whether the United States owns 50 percent or more of operating rights.

Where an unamended senior offer for a noncompetitive fractional oil and gas lease on acquired lands is not in compliance with 43 CFR 3130.4-4, a junior offer obtains priority to extent of conflicts between competing filings, and the junior offeror's protest must be sustained.

Frederick L. Smith et al., 19 IBLA 162 (Mar. 14, 1975)

An oil and gas simultaneous drawing entry card is properly returned to the applicant where the record shows that it was received in the Bureau office subsequent to the terminal hour and date set forth in the notice of lands available for simultaneous filing.

Robert B. Ferguson, 20 IBLA 299 (May 27, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Drawing entry cards for simultaneous oil and gas lease offers will be rejected and the filing fees retained where the applications are not made on the correct form.

John E. Brown, 21 IBLA 260 (Aug. 11, 1975)

It is improper for the Bureau of Land Management to require an applicant having partially conflicting noncompetitive acquired lands oil and gas lease offers filed in the regular over-the-counter procedure at different times to withdraw either his senior or junior offer simply because of the conflict.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

Where an oil and gas lease offeror files a simultaneous oil and gas lease drawing card and indicates that its corporate qualifications are filed under a specific serial number, the offer will not be rejected where the corporation can show that the State Office informed it earlier that its corporate qualifications had been placed in that file.

Allied Chemical Corp., 23 IBLA 214 (Jan. 6, 1976)

The listing of lands for the simultaneous filing of oil and gas lease offers does not constitute a determination by the Department of the Interior that conditions prevail in every instance which assure the availability of those lands for further leasing. The publication of the list merely serves as notice that offers to lease the lands listed will be received. The filing of an offer for a listed tract creates no contractual relationship between the offeror and the United States.

Milan S. Papulak, 24 IBLA 278 (Mar. 30, 1976)

Simultaneous oil and gas entry cards which are sent to the wrong State Office are not considered filed in the "proper office" within the meaning of 43 CFR 1821.2-2(f), and such State Office has no jurisdiction over entry cards pursuant to 43 CFR 1821.2-1(c); therefore, the filing fees for such offers should not be retained.

Where a simultaneous oil and gas entry card is filed in the wrong State Office, the entry card and the filing fee should be returned to the offeror.

James H. Scott, 25 IBLA 364 (July 6, 1976)

Where a person acting as trustee for two discrete trusts for two different minors files an oil and gas simultaneous filing entry card for the same parcel for each of the trusts, in the absence of any agreement, scheme, or plan which would confer on the trustee or settler a benefit from the lease, such filing is not violative of the regulation, 43 CFR 3112.5-2, prohibiting multiple filings.

It is proper to require a trustee of a trust, who is filing oil and gas offers therefor, to file any information relevant to determining whether the offeror is a qualified offeror, including without limitation, data bearing upon multiple filings in a simultaneous procedure. However, it is impermissible for the Bureau of Land Management to require the trustee to furnish other information not germane to those inquiries. The cancellation of a lease for failure to furnish data, some of which was not properly required, will be set

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

aside on appeal and the trustee afforded another opportunity to furnish such data as was properly required.

Margo Panos (Trust), Gus G. Panos (Trustee), 28 IBLA 1 (Nov. 5, 1976)

Appellant's submission with simultaneous oil and gas lease offer of a personal check to cover filing fees satisfied 43 CFR 3112.2-1(a)(1) despite drawee bank's subsequent refusal to honor that check, since the refusal is shown by evidence to be error on part of bank alone.

Hugh Burnett, 28 IBLA 303 (Jan. 10, 1977)

Regardless of whether offeror is described as "unqualified" or "disqualified," 43 CFR 3112.5-1 requires that upon successful drawees' failure to pay first year's rental, the lands shall be listed subsequently under the simultaneous drawing procedure rather than leased under the regular over-the-counter procedure in 43 CFR Subpart 3111.

Robert G. Lynn, 28 IBLA 310 (Jan. 14, 1977)

A pending noncompetitive oil and gas lease offer is not a valid existing right protected by the savings clause in the Alaska Native Claims Settlement Act.

James W. Canon et al., 1 SEC. 1 (Apr. 15, 1977)
84 I.D. 176

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

John P. Errebo, Jr., 32 IBLA 191 (Sept. 15, 1977)

Where a check has been submitted with a drawing entry card in payment of the $10 filing fee for a simultaneous oil and gas lease offer, and the check is dishonored by the bank, the offeror loses his priority unless the refusal to honor the check was the result of a bank error, corroborated by the bank.

John Eldon Dean, 32 IBLA 336 (Oct. 18, 1977)

Jonathan T. Ames, 33 IBLA 1 (Nov. 14, 1977)

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Charles P. Ricci, 33 IBLA 288 (Jan. 5, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where it is shown that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of the filing fee.

Charles P. Ricci (On Reconsideration), 34 IBLA 166 (Mar. 21, 1978)

Where BLM rejected appellant's offer for oil and gas lease because it failed to receive from him fractional interest statement required by 43 CFR 3130.4-4 (1975), and evidence affidavits by appellant and his wife were filed on appeal reciting that he mailed such statement with his entry card for simultaneous drawing, the presumption of administrative regularity obtains and appellant must be deemed to have not borne his risk of nonpersuasion.

Charles J. Babington, 36 IBLA 107 (July 14, 1978)

When the president of a corporation is the successful offeror in a drawing of simultaneous oil and gas lease offers and the vice president and the corporation also file applications for the same parcel of land in the same drawing, the president's offer must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation, thereby increasing its chances to be the successful applicant under 43 CFR 3112.5-2.

William R. Boehm, 36 IBLA 346 (Aug. 28, 1978)

The instructions printed on the simultaneous drawing entry card plainly advise that "[c]ompliance must also be made with the provisions of 43 CFR 3102." It is solely the responsibility of the offeror to ascertain what is contained in the regulations in order to comply therewith.

Not all persons may be qualified to be lessees, and for that reason all offerors must furnish evidence of their qualifications to hold oil and gas leases. In the case of corporations, such evidence must accompany the offer unless previously submitted, in which case reference to the serial number of the record suffices.

Appellant's request that it be permitted to furnish the evidence of qualifications on appeal is denied. In simultaneous oil and gas leasing, the only difference between the drawing entry cards is the order in which they are drawn. The applications are considered to have been simultaneously made. Giving an unqualified first-drawn entrant additional time to file infringes on the rights of the second-drawn qualified offeror.

University of the Trees, 40 IBLA 74 (Mar. 16, 1979)

Where separate statements of interest are required pursuant to 43 CFR 3102.6-1(a)(2) (1977), this Board must affirm the dismissal of a protest against the issuance of an oil and gas lease which is premised on the protestant's contention that the statement of the offeror must bear his original, holographic signature.

Although a lease offer may not be rejected solely because an agent affixed the offeror's facsimile signature to the offeror's separate statement, this does not prevent BLM from requiring that the offeror personally verify the information contained therein and provide whatever supplemental information may reasonably be required. A private agent may not interpose himself between a lease applicant and the Government

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

so as to mask the identity of the applicant and prevent direct contact by Federal officials who are properly concerned.

W. B. Gilmore, 41 IBLA 25 (May 29, 1979)

It is not proper to reject a drawing entry card oil and gas lease offer solely because an agent affixed the offeror's facsimile signature to both the DEC and to the offeror's separate statement required by 43 CFR 3102.6-1, as BLM may require that the offeror personally verify the information contained in the offer and in the statement, and provide whatever supplemental information that BLM may reasonably require.

Robert B. Coen et al., 41 IBLA 55 (May 31, 1979)

Where oil and gas lease offerors enclose agency statements with their drawing entry cards, which statements are clearly intended to, and appear to, apply to their offers, their cards are fully executed notwithstanding their failure to note on the face of the cards that the agency statements are enclosed, as nothing in the regulations or on the card directs an offeror to do so.

Nothing in the regulations requires an agency statement submitted under 43 CFR 3102.6-1(a) to be dated. Rather, the statement is an adjunct to the drawing entry card and is considered dated as of the signing and dating of the card.

An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed. Rather, such statements may be submitted over facsimile signatures.

Frederick T. Peters et al., 41 IBLA 262 (June 28, 1979)

Not all persons may be qualified to be lessees. Signing and dating the entry card constitute certification by the offeror of his qualifications as of a date certain.

As used in 43 CFR 3112.2-1, the term "fully executed" means that the applicant must, in order to render the entry card a valid and complete offer to lease, supply the information requested thereon, including the date.

Harry A. Zuckerman et al., 41 IBLA 372 (July 23, 1979)

Where offers for the same parcel of land are filed by two corporations in a simultaneous oil and gas lease drawing, and where the directors of the first corporation having authority to file offers and execute leases are directors of the second with the same authority and the surrounding circumstances suggest that the corporations are interrelated, the drawing is inherently unfair and the offers are properly rejected as a prohibited multiple filing. Collusion or intent to deceive the Department need not be shown.

June Oil and Gas, Inc., Cook Oil and Gas, Inc., 41 IBLA 394 (July 24, 1979) 86 I.D. 374

An offeror for oil and gas lease may withdraw his offer at any time prior to the drawing. However, the filing fee is retained as a service charge irrespective of the outcome of the drawing.

Don C. Bell II (Trustee), 42 IBLA 21 (July 25, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where an offeror submits two drawing entry cards on a parcel, both cards are properly disqualified. It is irrelevant that there was actually only one card in the drawing due to BLM's rejection of the other, before the drawing, as defective for another reason, as it is the submission of more than one card per parcel which is prohibited under 43 CFR 3112.2-1(a)(2).

Rae E. Colvin, 42 IBLA 266 (Aug. 27, 1979)

It is not proper to reject a drawing entry card oil and gas lease offer solely because an agent affixed the offeror's facsimile signature to both the DEC and to the offeror's separate statement required by 43 CFR 3102.6-1, as BLM may require that the offeror personally verify the information contained in the offer and in the statement, and provide whatever supplemental information that BLM may reasonably request. An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed.

Frances B. Bunn et al., 43 IBLA 242 (Oct. 10, 1979)

Oil and gas lease offerors are advised to refer to accompanying attachments on their drawing entry cards. However, where neither the regulations nor the instructions on the drawing entry card require that the card refer to the statements required by 43 CFR 3102.6-1, a noncompetitive oil and gas lease offer cannot be rejected for failure to do so, where such statements were actually submitted with the card.

Bharec Associates, 43 IBLA 317 (Oct. 22, 1979)

Brooks Griggs, 44 IBLA 185 (Nov. 30, 1979)

In the absence of a regulatory requirement, it is not proper to reject a drawing entry card oil and gas lease offer solely because an agent affixed the offeror's facsimile signature to the DEC and the separate statements of the offeror and the agent submitted in satisfaction of 43 CFR 3102.6-1 are machine copies, as BLM may require that the offeror personally verify the information contained in the offer and the statement, and provide whatever supplemental information that BLM may reasonably request. An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed.

Nothing in the regulations requires an agency statement submitted under 43 CFR 3102.6-1(a) to be dated. The statement is an adjunct to the drawing entry card and is considered dated as of the signing and dating of the card.

Lewis W. Peters, 44 IBLA 35 (Nov. 6, 1979)

Legibility

When an applicant for a noncompetitive oil and gas lease is requested to provide additional information for the adjudication of his drawing entry card offer, the offer is properly rejected where the evidence provided is illegible, and applicant was notified of the illegibility but responded by sending more illegible evidence.

Richard P. Lewis, 40 IBLA 100 (Mar. 27, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Reinstatement

Where an over-the-counter oil and gas lease offer is rejected because the applicant did not specify which of the described tracts he wanted the offer to include, he is presumed to have applied for all the tracts. Where on appeal he asserts that he desired to lease all the described lands, the decision will be reversed.

R. O. Heard, 22 IBLA 226 (Oct. 15, 1975)

A noncompetitive oil and gas lease offer for acquired lands, filed "over-the-counter," is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, where the balance of the rental is tendered with the notice of appeal, the offer may be reinstated with priority from the date the deficiency was corrected.

George S. Swan, 39 IBLA 47 (Jan. 16, 1979)

640-acre Limitation

The Department of the Interior will issue an oil and gas lease for less than 640 acres if the amount by which the lease offer is under 640 acres is less than the amount that the inclusion of the smallest adjoining subdivision available for leasing would put it in excess of 640 acres.

Kenneth D. Kirkland, 18 IBLA 349 (Jan. 14, 1975)

An oil and gas lease offer for less than 640 acres of land is properly rejected when the application fails to include adjoining, unsurveyed, nonnavigable riverbed lands which were available for leasing at the time the offer was filed.

John H. Williams, 18 IBLA 354 (Jan. 16, 1975)

No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation, or where the land is surrounded by lands not available for leasing, and where these circumstances do not exist, an offer for less than 640 acres must be rejected.

John F. Brown, 22 IBLA 50 (Sept. 16, 1975)

The Department of the Interior will not reject an oil and gas lease offer for public domain lands solely for the reason of the offer being for less than 640 acres where the amount by which the offer is under 640 acres is less than the amount by which the offer would exceed 640 acres by including the smallest adjoining subdivision available for leasing.

J. W. Bloom, 24 IBLA 276 (Mar. 30, 1976)

An oil and gas lease offer to lease less than 640 acres which adjoins land available for leasing is properly rejected.

Alice Hays, 36 IBLA 313 (Aug. 23, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

640-acre Limitation--Continued

No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation, or where the land is surrounded by lands not available for leasing, and where these circumstances do not exist an offer for less than 640 acres is properly rejected.

"Lands not available for leasing." Under 43 CFR 3110.1-3(a), lands are deemed to be not available for leasing when they are surrounded by lands contained within patents with no oil and gas rights reserved to the United States, when they are segregated from oil and gas leasing by withdrawal, or are embraced within an outstanding lease with an effective issuance date prior to the filing date of the subject offer.

Helen E. Reid, 39 IBLA 378 (Feb. 28, 1979)

Under 43 CFR 3110.1-3, it is improper to reject an oil and gas lease offer filed for more than 640 acres of available land where leases subsequently issued in response to prior applications have reduced the land available to the subject application to less than 640 acres.

Melvin Wolf, 43 IBLA 128 (Sept. 26, 1979)

Six-mile Square Rule

An oil and gas offer describing land which cannot be encompassed within a 6-mile square is defective and must be rejected, and where a lease is issued for part of the land embraced in the offer it must be canceled as to that land which is embraced in a proper offer filed prior to the issuance of the lease in order that the statutory preference right of the party first making a proper offer may be honored.

Robert W. David, 35 IBLA 205 (May 26, 1978)

Sole Party in Interest

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within 15 days after the filing of the lease offer, the offer must be rejected.

Emily Schenk, 21 IBLA 245 (Aug. 11, 1975)

Charmay E. Allred, Edward C. Allred, 26 IBLA 276 (Aug. 24, 1976)

An oil and gas lease offer signed by an attorney-in-fact for the offeror is properly rejected where it is not accompanied by a separate statement of the attorney's interest or lack of interest in the offer and the lease, if issued, as required by departmental regulation.

Southern Union Production Co., 22 IBLA 379 (Nov. 17, 1975)

Mitchell Energy Corp., 32 IBLA 244 (Sept. 21, 1977)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

An oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure must be rejected when the entry card contains the name of an additional party in interest and the required statement of the additional party's interest and qualifications is not filed within the time required by 43 CFR 3102.7. The filing of the required statement after that time has elapsed does not cure the defect.

John J. Gergurich, Darrell G. Seal, Thomas J. Sweeney, 25 IBLA 266 (June 24, 1976)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest, and there is a failure to file, within the time required by 43 CFR 3102.7, the statement of their interests, the agreement between the parties, and the evidence of their qualifications.

Leon M. Flanagan et al., 25 IBLA 269 (June 24, 1976)

An oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure must be rejected when the entry card contains the name of an additional party in interest and the required statement of the additional party's interest and qualifications is not filed within the time required by 43 CFR 3102.7. The offeror is not retroactively excused from submitting the required statement by an assertion in his appeal that he is the sole party in interest because the anticipated association between him and the additional party listed on the entry card had failed to materialize.

James D. Caddell, 25 IBLA 274 (June 24, 1976)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest, and there is a failure to file the statement of their interests, the agreement between the parties, and the evidence of their qualifications within the time required by 43 CFR 3102.7.

Lyle W. Todd and Eileen S. Todd, 26 IBLA 246 (Aug. 18, 1976)

Bill L. Lewis and Stanley E. Elliott, 37 IBLA 230 (Oct. 16, 1978)

Herbert Adler, 42 IBLA 226 (Aug. 22, 1979)

An oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure is properly rejected as defective where there are other parties in interest in addition to the applicant but the card does not list them or refer to an attachment, and an attachment dated nearly 6 months prior to the filing, signed by the applicant and four others stating their qualifications and setting forth a percentage of interest for each as "Partners in interest," fails adequately to set forth the nature of their agreement, and no other statement or information is filed within the time required by 43 CFR 3102.7.

Harry Reich, 27 IBLA 123 (Sept. 30, 1976) 83 I.D. 507

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the parties fail to submit a statement of their separate interests, any agreements between them and evidence of the qualifications of each offeror to hold the oil and gas lease.

Walter E. Anderson, Vern T. Jocelyn, 27 IBLA 253 (Oct. 20, 1976)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the offeror fails to submit an accurate statement of his interest and a copy of agreements between him and the other offerors.

Mildred A. Ross et al., 28 IBLA 364 (Feb. 3, 1977)

Lawrence T. Loftus et al., 44 IBLA 243 (Dec. 13, 1979)

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

C. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

The presence in a drawing of simultaneously filed noncompetitive oil and gas lease offers of several entry cards signed by different offerors bearing the common mailing address of a leasing service which has an agreement to pay the first year rental for the account of any successful offeror utilizing its services does not, in the absence of an enforceable agreement under which the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, establish an interest of the leasing service in the various lease offers constituting an improper multiple filing.

C. E. Pack, 30 IBLA 230 (May 26, 1977)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party and the statements of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

Michael J. Madigan, Robert E. Baines, 31 IBLA 58 (June 23, 1977)

Verner F. Sorenson, 32 IBLA 341 (Oct. 21, 1977)

William R. Curtis, 37 IBLA 124 (Oct. 3, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

A protest by a junior offeror against oil and gas lease offers which charges that fraudulent statements were made on the offers and implies other wrongdoing that violates the regulations requiring disclosure of all parties in interest is properly dismissed where the protestant fails to establish these charges or that the successful offers were in fact defective. A suggestion of the possibility of a violation of a regulation is not sufficient; a protestant must present competent proof of such violation, absent which a protest is properly rejected.

Arjay Oil Co., 31 IBLA 300 (July 22, 1977)

Arjay Oil Co., 33 IBLA 102 (Dec. 16, 1977)

Arjay Oil Co., 43 IBLA 98 (Sept. 20, 1979)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

When a leasing service holds an interest in a lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest and he is required by regulation, 43 CFR 3102.7, to provide the names of other interested parties, the nature and extent of their interest and the nature of the agreement between them not later than 15 days after the filing of the offer. Failure to file the required statements results in rejection of the offer.

Lola I. Doe, 31 IBLA 394 (Aug. 19, 1977)

Sidney H. Schreter, William P. Ford, Jr., 32 IBLA 148 (Sept. 12, 1977)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the name of an additional party in interest and the parties fail to submit a statement of their separate interests, any agreements between them, and evidence of the qualifications of each offeror to hold the oil and gas lease within 15 days of the filing.

Essie M. Cohen, Moses Daniel Cohen, 33 IBLA 266 (Jan. 5, 1978)

Where an oil and gas lease offer on a drawing entry card is signed by the offeror and lists the names of 10 other parties in interest, and is accompanied by a separate statement signed by each of the 11 parties in interest declaring (1) their respective addresses, (2) that they are American citizens, (3) that they had an oral agreement to participate in the lease, (4) that they would own equally, and (5) that they do not have direct or indirect interests in leases which exceed 246,000 in any one State, the requirements of 43 CFR 3102.7 have been satisfied and the lease may issue, all else being regular.

Morris P. Cohen et al., 33 IBLA 365 (Jan. 23, 1978)

Where an offeror and his agent filing service submit statements along with a drawing entry card, which statements indicate unequivocally that there is no agreement between them creating an interest in the agent, thus apparently obviating the need to submit details of the offeror/agent agreement per 43 CFR 3102.6-1, BLM, in its discretion, may either decline to inquire further into the details of the agreement or may request and examine a copy of the agreement to determine whether such an "interest" in the agent existed at the time the offer was filed.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and NOT an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Virginia L. Jones, 34 IBLA 188 (Mar. 21, 1978)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined by this Department to create an interest in the lease for the service, and the service files a waiver of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client and without any contractual consideration running from the client to the leasing service, the waiver is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Alfred L. Easterday, 34 IBLA 195 (Mar. 22, 1978)

The Department of the Interior may only issue an oil and gas lease to the first-qualified applicant, and a drawing entry card offer is properly rejected where it lists a second party in interest who fails to file timely the statement required by 43 CFR 3102.7.

Roy E. Wood, Robert A. Griggs, 34 IBLA 237 (Mar. 28, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, the burden is on a protestant attacking the validity of the offer to prove an accusation that there is an agreement giving the filing service an enforceable interest in the lease to be issued.

Clyde E. Frazier, 36 IBLA 141 (July 25, 1978)

"Interest." Where an individual files an oil and gas lease offer drawing entry card through a leasing service under an agreement by which the service is authorized to act as his exclusive representative in the sale of any lease rights obtained by him, and he is required to pay the service a set commission plus a percentage of revenues derived from any retained royalty interests, on any such sale, the leasing service has an enforceable right to share in any profits which may derive or accrue from the lease and, therefore, has an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

When a leasing service holds an interest in a lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest, and he is required by regulation, 43 CFR 3102.7, both to reveal this fact at the time his offer is filed, and to provide the names of other interested parties, the nature and extent of their interest, and the nature of the agreement between them, not later than 15 days after the filing of the offer. Failure to file the required statements results in rejection of the offer.

Where a leasing service is held to have an interest in the offer of one of its clients on a particular parcel of land, and the president of the service also files an offer in his own name on that parcel, the prohibition in 43 CFR 3112.5-2 against multiple filings has been violated, as, in addition to its interest in its client's offer, the service also has an interest in its president's offer, owing to his fiduciary duty to the service.

Harry E. Sixt, 36 IBLA 374 (Aug. 31, 1978)

"Interest." Where an individual files an oil and gas lease offer drawing entry card through a leasing service under an agreement by which the first $8,000 of the proceeds from any sale of a lease goes to the individual, the next $3,500 goes to the leasing service, and the balance of the proceeds goes to the individual, the leasing service has an enforceable right to a defined share in profits which may derive or accrue from the lease, and, therefore, has an "interest" in the offer as defined in 43 CFR 3100.0-5(b).

When a leasing service holds an interest in the anticipated lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest, and he is required by regulation, 43 CFR 3102.7, both to reveal this fact at the time his offer is filed, and to provide the names of other interested parties, the nature and extent of their interest, and the nature of the agreement between them, not later than 15 days after the filing of the offer. Failure to file the required statements must result in rejection of the offer.

Gertrude Galauner, 37 IBLA 266 (Oct. 19, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

Where a contract between an oil and gas lease offeror and a leasing service created an agency relationship, in the absence of circumstances giving the agent an authority coupled with an interest, the agent's authority ordinarily terminated upon the death of the principal. If the leasing service had an interest, a lease could not issue to the estate of the deceased if no statement was filed delineating the nature and extent of that interest as required by 43 CFR 3102.7.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

Where an oil and gas lease drawing entry card contains the names of other parties in interest and the separate statement of interest required to be filed is not signed by the offeror as required by 43 CFR 3102.7, the offer is properly rejected.

Elizabeth Fagedas, 38 IBLA 130 (Nov. 22, 1978)

"Interest." Where a partner in a firm, or business associate, or an officer of a corporation which is engaged in the oil and gas business, files an oil and gas lease offer individually in his own name, the partnership/ corporation/association may have a claim to any benefits accruing to the individual from the lease, owing to the partnership agreement, corporate by-laws, or personal contract, due to the partner's/officer's/ associate's fiduciary duty to hold any opportunity obtained individually for the exclusive use and benefit of the firm. This claim is an "interest" under 43 CFR 3100.0-5(b), and failure to disclose it within 15 days of the filing of the offer, as required by 43 CFR 3102.7, subjects the offer to rejection.

Where an oil and gas lease offeror has indicated that he is the sole party in interest in the offer, but a protestant shows that he is a member of a firm which bears his name and the name of another, that the firm is engaged in the oil business, and that the address of record on the lease offer is the address of the business firm, the case will be remanded for an investigation to ascertain if there has been a violation of 43 CFR 3102.7 and/or 43 CFR 3112.5-2.

Johnnie B. Gryder, 38 IBLA 146 (Dec. 5, 1978)

Where eight individuals enter into a single agreement with a leasing service whereby the service supplies parcel numbers, and the eight individuals file offers on two of these parcels and pay all their filing fees by a single check, there is a strong implication that each of the individuals has an interest in all of the offers filed on these parcels. Where one of these individuals, whose offer has resulted in the issuance of a lease, fails to respond to an order by this Board directing him to submit details of the agreement between himself and the other individuals by which to determine whether the requirements of 43 CFR 3102.6-1 and 3112.5-2 have been violated, it will be presumed that the indicated violations have occurred, and the cancellation of the lease will be affirmed on that basis.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

"Interest." Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client, strictly at the client's option, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. In such circumstances, the service does not have an "interest" in the lease, so that the client/offeror is not precluded from stating that he is the sole party in interest to the offer, and the filing of offers for the same parcel by other clients of the service is not disqualifying.

Geosearch, Inc., 39 IBLA 49 (Jan. 16, 1979)

Geosearch, Inc., 40 IBLA 267 (Apr. 18, 1979)

Geosearch, Inc., 40 IBLA 401 (May 14, 1979)

The fact that the addresses of an oil and gas lease offeror and a filing service are identical does not disqualify the offer or afford the offeror or filing service a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

Where there is no evidence in the record that the offeror with first priority in a simultaneous oil and gas lease drawing is not the sole party in interest, a protest alleging an interest in a filing service may properly be dismissed.

Joseph J. O'Keefe, 40 IBLA 378 (May 14, 1979)

When an individual files an oil and gas lease offer through a leasing service under a contractual agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service a commission according to a set schedule on any sale plus a percentage of any royalties, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

A purported disclaimer by a leasing service of its interests in its clients' offers which is filed with BLM prior to the filing of these offers, but which, by its own terms, does not apply to the interests held by the service in these offers, is ineffectual and does not erase these interests. This disclaimer is also ineffectual as a matter of law even as to a client's offer to which it does apply, where it is unsupported by consideration and where it is not communicated to the client, as it may be retracted by the service. The service's interests in these offers therefore remain extant as of the filing of its clients' offers, notwithstanding the purported disclaimer, and where the existence of its interests is not disclosed on the offer cards as required by 43 CFR 3102.7, BLM properly rejects the offers.

Frederick W. Lowey et al., 40 IBLA 381 (May 14, 1979)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b). A leasing service, which files a simultaneous noncompetitive oil and gas lease offer drawing entry card on behalf of its client, bound by a "put option" does not have a hidden interest in the offer and does not violate 43 CFR 3102.7 by failing to disclose this put option or 43 CFR 3112.5-2 by filing offers for more than one client on a parcel.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to present evidence of an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

Jack Mask, 41 IBLA 147 (June 18, 1979)

Kelley Everette, 41 IBLA 155 (June 18, 1979)

The fact that the addresses of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2.

Where there is no evidence of any violation of the regulations in the record, the burden is on the protestant to submit competent evidence of an accusation that there is an agreement giving a filing service an enforceable interest in the lease, absent which the protest is properly rejected. Allegations that there was a contract between the offeror and a filing service in which the filing service withholds an overriding royalty interest from the offeror and participates in the proceeds, without evidence, is not sufficient to show that the offeror was not a sole party in interest.

J. Theodore Ellis, C. E. Pack, 41 IBLA 231 (June 27, 1979)

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to present competent evidence supporting the accusation that there is an agreement giving the agent an enforceable interest in the lease to be issued. In absence of such evidence, the protest is properly rejected.

Alice E. Hardy, 44 IBLA 5 (Nov. 6, 1979)

Under the Departmental regulations an offeror in a simultaneous oil and gas lease drawing must sign a statement that he is the sole party in interest, or, if not, submit the statement required by 43 CFR 3102.7. Failure to comply with the regulations requires rejection of the lease offer.

Where a protest, with accompanying supporting evidence, alleges that the oil and gas lease offer drawn first in a simultaneous filing-drawing procedure violated the regulations because a party in interest was not disclosed and there was a multiple filing, the Bureau of

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

Land Management should first afford the drawee an opportunity to respond to the protest before rejecting the offer based on facts alleged in the protest. The error, however, is rendered harmless where on appeal the offeror has full opportunity to make factual submissions and respond to the allegations.

"Interest in an oil and gas lease or offer." If an oil and gas lease offeror in an oral agreement gives another person "a claim or any prospective or future claim to an advantage or benefit from a lease," there would be an interest in the lease or lease offer which must be disclosed under 43 CFR 3102.7. That an offeror might raise a technical legal defense against enforcement of such an agreement in a court does not militate against there being a claim or avoid the consequence of the disclosure regulation or 43 CFR 3112.5-2 prohibiting multiple filing in drawing procedures.

"Interest in an oil and gas lease or offer." Where affidavits submitted on appeal by an oil and gas lease offeror disclose that prior to the filing of an oil and gas lease offer the offeror orally agreed to give the person filing the offer for him either the opportunity to refuse to purchase the lease under terms and conditions that a third party would make (right of first refusal), or the opportunity to make the first offer before any other offer would be accepted (first right to buy), the offeror has given the person an interest in the offer as defined in the regulations to include a prospective claim to an advantage or benefit from a lease.

H. J. Enevoldsen, 44 IBLA 70 (Nov. 20, 1979)
86 I.D. 643

ASSIGNMENTS OR TRANSFERS

The assignor of an oil and gas lease is not barred from protesting against a decision approving the assignment because of his failure to appeal from an earlier decision denying the assignee's request for assignment approval but stating that approval would be permitted upon performance of certain conditions.

The failure by an oil and gas lease assignee to timely file the requisite bond as required by an initial State Office decision cannot be relied upon by the assignor as a basis for protesting a subsequent decision which reconsiders and grants a request for assignment approval, for it is the Department alone which may assert such default as a basis for denying a subsequent assignment approval request.

When an assignment of an oil and gas lease, made prior to lease renewal, has been approved after renewal and thereafter it appears that there is a controversy whether the parties contemplated that the assignment of the base lease would extend to the renewal lease, the Department will not take action on a protest requesting rescission of the assignment approval, but will maintain the *status quo* for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

Joseph Alstad, 19 IBLA 104 (Mar. 4, 1975)

The Bureau of Land Management may assert, in its discretion, failure to timely file assignment instruments as a basis for denying approval to an assignment where intervening assignees or other adverse interests are involved.

Where there is a private dispute as to the validity or effect of an oil and gas lease assignment, the Bureau of Land Management will not take action on a request for assignment approval, but will maintain the *status quo* for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

James V. O'Hare, F. Kenneth Fillhollen, 19 IBLA 171 (Mar. 10, 1975)

Where an oil and gas lease is subject to cancellation but an assignment of the lease has been filed by one claiming protection as a bona fide purchaser in accordance with the statute and regulations, action to cancel the lease will be stayed until it is determined whether the assignee is, in fact, entitled to protection of the statute and regulations afforded to bona fide purchasers.

Dale A. Spiegel, 19 IBLA 235 (Mar. 26, 1975)

Tiffany Trust, 21 IBLA 160 (July 21, 1975)

Gus Banos, 21 IBLA 163 (July 21, 1975)

Sec. 27 of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 187 (1970), requires that any assignment of all or any part of a lease be approved by the Department before an assignee becomes recordholder of any interest therein.

The Department does not give formal approval of assignments of royalty interests, but such an assignment is deemed valid if the requirements of 43 CFR 3106.4 are met.

William G. Pearland, 21 IBLA 66 (June 25, 1975)

The requirement of 43 CFR 3106.3-1 that assignments be filed in the State Office within 90 days of their execution is directory, not mandatory, its purpose being one of Departmental convenience. Where the failure to timely file an assignment has not adversely affected rights of any third parties, such assignment may be approved.

Hughes & New Oil Co., Inc., et al., 22 IBLA 305 (Nov. 4, 1975)

Denial of a request for approval of an assignment of an interest in an oil and gas lease is proper where (1) the lease had terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1970) for failure to make timely payment of rental, and where (2) the assignor is a stranger to the lease, and the record is devoid of any assignment from the lessees of record to the assignor.

Albert Cicialic, Jr., Gennino J. Grande and Jeremy Y. Cohen, 26 IBLA 169 (Aug. 4, 1976)

Where approval of an assignment of interest in an oil and gas lease has been refused by the Bureau of Land Management until such time as the assignor supplies proof from the United States Geological Survey of proper plugging and surface rehabilitation, or the assignee submits a bond relating thereto, and subsequent to the appeal, the Geological Survey provides the Bureau of Land Management with notification of approval of surface restoration, the decision refusing approval will be vacated and the case file will be remanded for further consideration of the assignments.

Clinton St. Clair, 28 IBLA 98 (Nov. 15, 1976)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

When an oil and gas lease is in royalty status and acreage containing the well is segregated into a new lease by approval of an assignment, the nonproductive base lease does not terminate for failure to pay rental timely if the Bureau of Land Management does not inform the lessee of the segregation until after the anniversary date of the lease.

Odessa Natural Corp., 30 IBLA 28 (Apr. 11, 1977)

The oil and gas lessee of record is responsible for paying rental timely and for meeting the reinstatement requirements. The fact that a lessee attempts to assign his lease does not absolve him of the rental and reinstatement requirements until the assignment is approved by the Bureau of Land Management.

Leonard A. J. Tancredi, 32 IBLA 325 (Oct. 11, 1977)

An oil and gas lessee of record is responsible for paying rental timely. The fact that a lessee attempts to assign his lease does not absolve him of the rental payment requirements until the assignment is approved by the Bureau of Land Management.

Auburn C. Hunsucker, 34 IBLA 316 (Apr. 24, 1978)

An application for assignment of an undivided partial interest in an oil and gas lease is properly approved by BLM effective the first day of the lease month following the date of filing of the application. In the interim between the filing of the application and the effective date of the assignment, the prospective assignor remains the sole lessee, and, as such, is the only person who may relinquish rights under the lease.

Sol Singer, Gretchen Capital, Ltd., 35 IBLA 361 (June 23, 1978)

Where a decision canceling an oil and gas lease has been issued by BLM and received at the lessee's address of record, any subsequent assignment of the lease will not be protected under the provisions of 30 U.S.C. § 184(i) (1976), and whether or not the purported assignee is a bona fide purchaser is a moot question.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

A corporate applicant for assignment of an oil and gas lease must file statements required by 43 CFR 3102.4-1 with its application or, if already filed, so indicate by reference to the serial number of the Bureau of Land Management record in which such information is available.

Although deficiencies in an application for assignment of an oil and gas lease may be timely cured, 30 U.S.C. § 187a (1976) specifies the time when an assignment is effective, and no assignment can be approved for a terminated oil and gas lease.

An oil and gas lease may be relinquished only by the record title holder, and a partial relinquishment is not effective if it is filed by an applicant for an assignment which has not been approved.

Even if it were true that termination of an oil and gas lease was in part the result of Bureau of Land Management's failure to act timely on an assignment application, there is no authority either to withhold the effect of termination under 30 U.S.C. § 188(b) (1976) or to reinstate the lease under sec. 188(c), where there has been no payment of the full rental within 20 days after termination.

Reichhold Energy Corp., 40 IBLA 138 (Mar. 29, 1979)

Where the purchaser of an oil and gas lease asserts that he purchased the lease from the offeror whose drawing entry card was drawn with first priority, for cash consideration without knowledge of any irregularities or violation of the regulations, he is considered to be a bona fide purchaser, and his lease is not subject to cancellation unless prima facie evidence is presented to the contrary.

J. Theodore Ellis, E. E. Peck, 41 IBLA 231 (June 27, 1979)

BONA FIDE PURCHASER

The bona fide purchaser provision of the Act of Sept. 21, 1959, 73 Stat. 571, *as amended*, 30 U.S.C. § 184(h)(2) (1970), does not protect the assignee of a noncompetitive oil and gas lease offeror from the rejection of its assignor's offer after it is drawn first at a simultaneous drawing.

Leon M. Flanagan et al., 25 IBLA 269 (June 24, 1976)

Under 30 U.S.C. § 184(h)(2) (1976) and 43 CFR 3102.1-2(a), BLM properly dismissed a protest and refused to cancel an oil and gas lease which had been assigned to a bona fide purchaser, even though the lease might have been subject to cancellation prior to the assignment if the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

Robert C. Bace, Clyde E. Beggs, 37 IBLA 162 (Oct. 10, 1978)

Where a decision canceling an oil and gas lease has been issued by BLM and received at the lessee's address of record, any subsequent assignment of the lease will not be protected under the provisions of 30 U.S.C. § 184(i) (1976), and whether or not the purported assignee is a bona fide purchaser is a moot question.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

Under 43 CFR 3102.1-2(a), BLM properly dismisses a protest and refuses to cancel an oil and gas lease which has been assigned to a bona fide purchaser prior to the initiation of the protest, regardless of the truth of allegations that the lease was subject to cancellation because the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

Geosearch, Inc., 39 IBLA 49 (Jan. 16, 1979)

Where BLM does not reject simultaneous noncompetitive oil and gas lease offers drawn with second priority after the issuance of the leases to the first drawees, the second drawees retain an interest which must be considered if the leases are canceled because the first drawees' offers are defective, provided that the leases have not been assigned to bona fide purchasers. In those circumstances, BLM's decision dismissing the second drawees' protests against the continued validity of these leases for lack of interest must be vacated.

A decision by BLM dismissing protests against the continued validity of the leases because the assignees are

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

bona fide purchasers will be vacated where the record contains no statement by the assignees of oil and gas leases that they are bona fide purchasers, and the matter will be remanded so that BLM may join the assignees to the protest proceedings in order to give them the opportunity to show that they hold and acquired the interest as bona fide purchasers, and to give the protestants the opportunity to present prima facie evidence to the contrary, per 43 CFR 3102.1-2(c).

Geosearch, Inc., 40 IBLA 397 (May 14, 1979)

Where BLM does not reject simultaneous noncompetitive oil and gas lease offers drawn with second priority after the issuance of the leases to the first drawees, the second drawees retain an interest which must be considered if the leases are canceled because the first drawees' offers are defective, provided that the leases have not been assigned to bona fide purchasers. In those circumstances, BLM's decision dismissing the second drawees' protests against the continued validity of these leases for lack of interest must be vacated.

A decision by BLM dismissing protests against the continued validity of the leases because the assignees are bona fide purchasers will be vacated where the record contains no statement by the assignees of oil and gas leases that they are bona fide purchasers, and the matter will be remanded so that BLM may join the assignees to the protest proceedings in order to give them the opportunity to show that they acquired the interest as bona fide purchasers, and to give the protestant the opportunity to present prima facie evidence to the contrary, per 43 CFR 3102.1-2(c). Where the assignees have alleged that they are bona fide purchasers, it is up to the protestant to show prima facie to the contrary.

Geosearch, Inc., 41 IBLA 291 (June 28, 1979)

BONDS

A bond for not less than $1,000 is properly required to be filed when all or any part of the land in a noncompetitive lease is included within the limits of a known geologic structure of a producing oil and gas field. That the land is included in a communitized producing unit does not vitiate that requirement.

Duncan Miller, 20 IBLA 9 (Apr. 14, 1975)

Oil and gas lease offers for lands within the Lake Mead National Recreation area are subject to the general oil and gas regulations. Bond requirements in situations, as this one, beyond the ambit of 43 CFR 3104.1-2 may not be imposed.

Robert R. Wahl, Howard Yes, 21 IBLA 262 (Aug. 11, 1975)

It is improper to cancel an oil and gas lease for failure of the lessee to file a bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of third party rights and no adverse impact on the interest of the United States.

Estate of John P. Wagner and The Superior Oil Co., 26 IBLA 119 (July 26, 1976)

OIL AND GAS LEASES--Continued

BONDS--Continued

Where part of the lands in an oil and gas lease are included within the known geologic structure of a producing oil or gas field, the annual rental rate will be increased for all of the land in the lease and a bond required.

W. E. Cahoon Investment Co., John Cahoon, 27 IBLA 210 (Oct. 6, 1976)

Cancellation of an oil and gas lease pursuant to statute, 30 U.S.C. § 188(b) (1970), and the regulation promulgated thereunder is discretionary and not mandatory. An oil and gas lease need not be canceled because of the failure of the lessee to file a structure bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of the rights of third parties and no adverse impact on the interest of the United States.

Howard S. Rucker, 29 IBLA 30 (Feb. 8, 1977)

When a Statewide bond is reduced below the required amount because the U.S. Geological Survey recovered from the surety on the bond assessments against oil and gas leases, the Bureau of Land Management must require the principal on the bond to file a new bond or bonds in the appropriate amount.

James S. Guleke, 34 IBLA 1 (Feb. 8, 1978)

A regulation which provides that coverage of nationwide oil and gas bond in force at the effective date of the regulation may be expanded by a rider to include geothermal resources leases does not permit a replacement nationwide oil and gas bond executed after the effective date of the regulation to be so modified to include geothermal resources operations.

Mono Power Co., 37 IBLA 100 (Sept. 28, 1978)

When an oil and gas lessee's bond is reduced below the required amount because of Geological Survey's recovery from the surety of unpaid assessments due under the lease, the Bureau of Land Management must require the principal on the bond to file a new bond in the appropriate amount.

William J. Colman, 37 IBLA 310 (Oct. 23, 1978)

An oil and gas lessee is required to post bond before he may initiate drilling operations on his lease. Where it is noted in a decision appealed from that neither the lessee nor his operator have posted bond, and the lessee does not controvert this fact on appeal, it is properly found that there was no bond coverage.

Where a lessee is required by law to post bond before commencing drilling and fails to do so, any drilling operations actually undertaken by him do not constitute "diligent prosecution" of "actual drilling operations" in good faith under 43 CFR 3107.2-3, and he is therefore not entitled to an extension of his lease.

Richard P. Smoot, 39 IBLA 1 (Jan. 8, 1979)

OIL AND GAS LEASES--Continued

BONDS--Continued

A bond filed by an oil and gas lessee pursuant to 43 CFR 3814.1 may extend only to lands in which such lessee has record lease title interest and which lands were patented under the Stock-Raising Homestead Act, 43 U.S.C. §§ 291-301 (1970). Where a lessee has on file with a Bureau of Land Management State Office an approved Nationwide bond, a separate bond for the protection of surface owners is no longer required. 43 CFR 3104.2 and 3104.3.

Coquina Oil Corp., 41 IBLA 248 (June 27, 1979)

CANCELLATION

Where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously filed offers and the lessee's personal check in payment of the first year's rental is returned by the drawee bank because of uncollected funds, a decision canceling the lease will be affirmed; and the fact that the bank, after consultation with its depositor indicated that it would honor the check upon resubmission will not serve to avoid the lease cancellation where no bank error is shown.

Dale A. Spiegel, 19 IBLA 235 (Mar. 26, 1975)

A noncompetitive oil and gas lease must be canceled where the land described therein was determined by the United States Geological Survey to be within a known geologic structure of a producing oil or gas field prior to the date of signing the lease on behalf of the United States by the authorized officer.

William T. Alexander, 21 IBLA 56 (June 18, 1975)

Amerada Hess Corp., 33 IBLA 293 (Jan. 10, 1978)

Where a Federal oil and gas lease has issued covering land which has been patented with no mineral reservation to the United States in the patent, the oil and gas lease is properly canceled as to such land.

O. D. Presley, 21 IBLA 190 (July 28, 1975)

It is improper to dismiss a protest against issuance of an oil and gas lease applied for pursuant to the Act of May 21, 1930, 30 U.S.C. § 301 *et seq.* (1970), for lands underlying a railroad right-of-way granted under the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented without a reservation for minerals. In such case title to the mineral estate underlying the right-of-way is no longer held by the United States and, therefore, a lease issued pursuant to the 1930 Act is void and must be canceled.

Amerada Hess Corp., 24 IBLA 360 (Apr. 27, 1976)
83 I.D. 194

An oil and gas lease issued for 2,960 acres in violation of administrative regulations need not be canceled in its entirety, in the absence of an intervening qualified applicant.

John T. Stewart III, Harlan C. Altman, Jr. (Trustees), 83 I.D. 247
25 IBLA 306 (June 28, 1976)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

The Bureau of Land Management has no authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental on or before the anniversary date when a valid lease for the same land has been issued prior to the filing of the petition for reinstatement. Therefore, unless the first lease is deemed not to have terminated, it is erroneous to cancel the subsequent valid lease.

C. Norman Stark, 26 IBLA 87 (July 19, 1976)

The statute, 30 U.S.C. § 188(b) (1970), and regulation, 43 CFR 3108.2-3, concerning the cancellation of oil and gas leases are discretionary not mandatory.

It is improper to cancel an oil and gas lease for failure of the lessee to file a bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of third party rights and no adverse impact on the interests of the United States.

Estate of John F. Wagner and The Superior Oil Co., 26 IBLA 119 (July 26, 1976)

The signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease and creates a binding contract; such a lease contract is not subject to cancellation by reason of inclusion of leased land in a known geologic structure as of a date subsequent to lease issuance.

Barbara C. Lisco, 26 IBLA 340 (Sept. 7, 1976)

Where an oil and gas lease offer when first filed is not accompanied by full payment of the first year's rental, but is deficient only $20, not more than 10 percent of the required amount, and the lease is subsequently issued with a notice that the deficiency must be paid within 30 days under penalty of cancellation, the lease must be canceled pursuant to 43 CFR 3103.3-1 where the required deficiency payment is not submitted within the prescribed period.

Albert J. Pieri, 27 IBLA 61 (Sept. 27, 1976)

Where the Bureau of Land Management sends notice to an offeror, pursuant to 43 CFR 3103.3-1, that the first year's rental accompanying an oil and gas lease offer is deficient in the amount of 41 cents, and that the deficiency must be paid within 30 days from notice under penalty of cancellation of the lease, the lease will be canceled where the lessee receives the notice, yet fails to pay.

Dona L. Jackson, 27 IBLA 217 (Oct. 6, 1976)

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing of simultaneous oil and gas lease offers and the vice president and secretary of the corporation also filed applications for the same parcel of land in the same drawing, as individuals, the offer of the corporation must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation and thereby increase its chances to be the successful applicant.

Panka Corp., 27 IBLA 220 (Oct. 7, 1976)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

When a noncompetitive oil and gas lease has been issued and includes land within a known geologic structure which was ascertained prior to the issuance of the lease, the lease was erroneously issued and must be canceled to the extent that it included land within the KGS.

David A. Provinse, 27 IBLA 376 (Nov. 5, 1976)

It is proper to require a trustee of a trust, who is filing oil and gas offers therefor, to file any information relevant to determining whether the offeror is a qualified offeror, including without limitation, data bearing upon multiple filings in a simultaneous procedure. However, it is impermissible for the Bureau of Land Management to require the trustee to furnish other information not germane to those inquiries. The cancellation of a lease for failure to furnish data, some of which was not properly required, will be set aside on appeal and the trustee afforded another opportunity to furnish such data as was properly required.

Margo Panos (Trust), Gus G. Panos (Trustee), 28 IBLA 1 (Nov. 5, 1976)

Where the Bureau of Land Management sends notice to an offeror at his record address, pursuant to 43 CFR 3103.3-1, that the first year's rental accompanying his noncompetitive oil and gas lease offer is deficient and such notice is returned to the Bureau marked "Unclaimed" by the post office, the cancellation of the lease will be set aside and the notice will not be considered to have been served on the offeror, pursuant to 43 CFR 1810.2(b), when the post office has failed to forward the notice in accordance with a request by the offeror to forward all mail and other mail has, in fact, been forwarded.

Jack R. Coombs, 28 IBLA 53 (Nov. 9, 1976)

"Cancellation" and "termination." The "cancellation" and the "termination" of oil and gas leases are separate, distinct concepts. Cancellation requires a specific act by the Department authorized by various statutes. Termination under 30 U.S.C. § 188(b) (1970) is automatic, occurring by operation of law when the lessee fails to pay his rental timely.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

Cancellation of an oil and gas lease pursuant to statute, 30 U.S.C. § 188(b) (1970), and the regulation promulgated thereunder is discretionary and not mandatory. An oil and gas lease need not be canceled because of the failure of the lessee to file a structure bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of the rights of third parties and no adverse impact on the interest of the United States.

Howard S. Bugbee, 29 IBLA 30 (Feb. 8, 1977)

Improper issuance of a noncompetitive oil and gas lease in response to a defective drawing entry card in the simultaneous filing procedure does not foreclose the right of the second drawn applicant whose drawing entry card was complete when filed to a lease for the parcel named; the erroneously issued lease must be canceled, and upon cancellation, the second drawee must be awarded a lease to the parcel, all else being regular.

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

Gerald L. Christensen, Edward C. Green, 30 IBLA 303 (June 6, 1977)

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired minerals owned by the United States are subject to leasing under that Act.

Duncan Miller, 32 IBLA 137 (Sept. 12, 1977)

Where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously filed offers and the lessee's personal check in payment of the first year's rental is returned by the drawee bank as uncollectible, a decision canceling the lease will be affirmed in the absence of a showing of error on the part of the bank.

Norman McGrath, 32 IBLA 392 (Nov. 8, 1977)

The Secretary of the Interior generally has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates.

Where an oil and gas lease is canceled in part because it was erroneously issued as to that part, there is no authority for the Department to pay to the lessee unrealized anticipated profits or to refund the rental for the portion of the lands retained in the lease. By signing the simultaneous oil and gas drawing card, the offeror agreed to accept a lease for those portions of the tract found by BLM to be available for leasing.

Paul W. Temple, 33 IBLA 98 (Dec. 16, 1977)

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the president and/or the vice-president of the corporation also filed applications for the same parcel of land in the same drawing as individuals, the offer of the corporation must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation and thereby increase its chances to be the successful applicant.

Graybill Terminals Co., 33 IBLA 243 (Jan. 5, 1978)

30 U.S.C. § 188(b) (1970), and its implementing regulation 43 CFR 3108.2-1, requiring a notice of deficiency on a form approved by the director apply only to rental payments due on the anniversary dates of noncompetitive oil and gas leases, and are inapplicable to deficient initial rental payments for noncompetitive oil and gas lease offers.

Where the Bureau of Land Management notifies an oil and gas lessee of a deficiency in initial rental and the deficiency is not paid to the Bureau within the time prescribed, but is paid some 5 months later, the delay being ascribed to "oversight" the lateness of the payment will not be excused and the cancellation of the lease for failure to pay the rental timely is properly sustained.

Evelyn Chambers, 33 IBLA 271 (Jan. 5, 1978)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

A lease erroneously issued in violation of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property must be canceled if a lease is awarded to another applicant in a drawing held among the first and other offers simultaneously filed following repeal of the regulations.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

An oil and gas offer describing land which cannot be encompassed within a 6-mile square is defective and must be rejected, and where a lease is issued for part of the land embraced in the offer it must be canceled as to that land which is embraced in a proper offer filed prior to the issuance of the lease in order that the statutory preference right of the party first making a proper offer may be honored.

Robert W. David, 35 IBLA 205 (May 26, 1978)

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by corporate qualification papers nor by any reference to a serial number where such information is to be found, as required by 43 CFR 3102.4-1.

Where a simultaneous drawing entry card culminates in lease issuance and it is subsequently ascertained that the serial number represented by the offeror to contain the corporate qualification papers, relates to "Christiansen Oil and Gas, Inc.," rather than to the offeror-lessee, Christiansen Oil, Inc., the lease is properly canceled, since the offeror was not the first-qualified offeror.

Christiansen Oil, Inc., 37 IBLA 52 (Sept. 18, 1978)

Under 30 U.S.C. § 184(h)(2) (1976) and 43 CFR 3102.1-2(a), BLM properly dismissed a protest and refused to cancel an oil and gas lease which had been assigned to a bona fide purchaser, even though the lease might have been subject to cancellation prior to the assignment if the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

Robert G. Pace, Clyde E. Boggs, 37 IBLA 162 (Oct. 10, 1978)

Where the official record of an oil and gas lease contains nothing either showing that an oil and gas lease applicant's $10 filing fee was included in a check which was dishonored by the drawee bank, or rebutting the applicant's assertion that his filing fee was instead included in another check processed by BLM without incident, BLM's decision to cancel a lease issued pursuant to this offer because no filing fee was paid as required by 43 CFR 3103.2-1(a) will not be sustained for that reason.

Where eight individuals enter into a single agreement with a leasing service whereby the service supplies parcel numbers, and the eight individuals file offers on two of these parcels and pay all their filing fees by a single check, there is a strong implication that each of the individuals has an interest in all of the offers filed on these parcels. Where one of these individuals, whose offer has resulted in the issuance of a lease, fails to respond to an order by this Board directing him to submit details of the agreement between himself and the other individuals by which to determine

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

whether the requirements of 43 CFR 3102.6-1 and 3112.5-2 have been violated, it will be presumed that the indicated violations have occurred, and the cancellation of the lease will be affirmed on that basis.

Where a decision canceling an oil and gas lease has been issued by BLM and received at the lessee's address of record, any subsequent assignment of the lease will not be protected under the provisions of 30 U.S.C. § 184(i) (1976), and whether or not the purported assignee is a bona fide purchaser is a moot question.

Robert A. Chenoweth, 28 IBLA 205 (Dec. 13, 1976)

Under 43 CFR 3102.1-2(a), BLM properly dismisses a protest and refuses to cancel an oil and gas lease which has been assigned to a bona fide purchaser prior to the initiation of the protest, regardless of the truth of allegations that the lease was subject to cancellation because the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

Geosearch, Inc., 39 IBLA 49 (Jan. 16, 1979)

An oil and gas lease issued for land available for leasing, but in violation of an administrative regulatory requirement, need not be canceled in the absence of an intervening qualified applicant or some overriding policy consideration.

Merle C. Chambers, 40 IBLA 144 (Mar. 29, 1979)

An oil and gas lease issued on July 1, 1951, is not controlled by P.L. 83-555, effective July 29, 1954, and the lease therefore does not terminate automatically by operation of law if annual rental is not paid timely, as this law does not apply retroactively to the lease in the absence of written notice from the lessees that they have elected to subject their lease to this law. Rather, the mineral leasing law in effect prior to July 29, 1954, controls, under which the lessees' failure to pay annual rental subjects the lease to cancellation only after BLM gives them 30 days' notice of their failure to pay the rental timely. BLM's decision canceling such lease will be vacated where it did not give the lessees the required notice.

Allied Chemical Corp. et al., 40 IBLA 292 (Apr. 18, 1979)

COMMUNITIZATION AGREEMENTS

A bond for not less than $1,000 is properly required to be filed when all or any part of the land in a noncompetitive lease is included within the limits of a known geologic structure of a producing oil and gas field. That the land is included in a communitized producing unit does not vitiate that requirement.

Duncan Miller, 20 IBLA 9 (Apr. 14, 1975)

In order for a communitization agreement to qualify a lease as containing a "well capable of producing oil or gas" within the meaning of 30 U.S.C. § 188(b) (1970) and thus not subject to rental requirements, the agreement must be approved by the Secretary of the Interior.

C. J. Iverson, 21 IBLA 312 (Aug. 14, 1975) 82 I.D. 386

OIL AND GAS LEASES--Continued

COMMUNITIZATION AGREEMENTS--Continued

In the absence of an approved communitization agreement involving a Federal oil and gas lease, production from fee land within a State spacing unit cannot be attributed pro rata to Federal leases within the spacing unit, and where there is no drilling operation, producing well or well capable of production on such lease, such lease expires at the end of its primary term.

Kirkpatrick Oil Co., 32 IBLA 329 (Oct. 11, 1977)

Sec. 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188 (1970), providing for the automatic termination of a lease, not containing a well capable of production of oil and gas in paying quantities, for nonpayment of the annual rental, does apply to a lease which is entitled to an extension beyond its initial 10-year term because of termination of an approved communitization agreement under 30 U.S.C. § 226(j) (1970), even though notice of the extension was not given to the lessee in time for him to receive it and return the rental so that the payment would be received by BLM no later than the 11th anniversary date of the lease.

Jack L. McClellan, Marton Majoros, 34 IBLA 53 (Feb. 16, 1978)

A notice of appeal from Geological Survey's failure to approve a communitization agreement must be filed within 30 days after appellant is served with the decision thereof or the doctrine of administrative finality generally bars consideration of the same issue in a later appeal.

Where approval of a communitization agreement has been denied, and other authorization is not present, production from an oil and gas lease within a State spacing unit cannot be attributed to another Federal lease, and absent production that lease expires at the end of its term.

Gulf Oil Corp., 44 IBLA 292 (Dec. 26, 1979)

COMPETITIVE LEASES

Where high bids, not clearly spurious or irresponsible, tendered at a competitive sale of oil and gas leases, are rejected solely on the statement of a field official that the bids are inadequate, and no basis whatever for that conclusion is reflected in the case record, the decision will be set aside and the case will be remanded for the compilation of a proper record and readjudication of the acceptability of the bids.

Arkla Exploration Co., 22 IBLA 92 (Sept. 22, 1975)

Frances J. Richmond, 24 IBLA 303 (Apr. 5, 1976)

The provisions of the Mineral Leasing Act for Acquired Lands, 61 Stat. 913, 30 U.S.C. § 351 et seq. (1970), and those of the Mineral Leasing Act, 41 Stat. 437, 30 U.S.C. § 181 et seq. (1970), authorize the Secretary of the Interior to reject high bids for upland oil and gas lease based on the inadequacy of the bonus bid if such rejection has a reasonable basis in fact.

An oil and gas lease bidder appealing from the rejection of his tender on the basis of inadequacy of the bonus bid must show by substantial evidence either (1) the criteria utilized in establishing the minimum bid value failed to include all relevant considerations, or included factors that were not relevant; or (2) the criteria were incorrectly applied.

H & W Oil Co., Inc., 22 IBLA 313 (Nov. 10, 1975)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

Rejection of the high bid(s) tendered for parcel(s) of land offered at a sale of competitive oil and gas leases will be affirmed on appeal where the case file contains memoranda from the U.S. Geological Survey sufficient to establish that the pre-sale minimum evaluation for the tract(s) was accomplished by a GS lease sale committee consisting of an engineer and a geologist, and their reasoned evaluation was considerably in excess of appellant's bid(s).

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases, and the Secretary is entitled to rely on its reasoned analysis.

Under 43 CFR 3120.3-1, the United States reserves the right to reject any and all bids submitted at a competitive oil and gas lease sale. However, a decision involving the exercise of administrative discretion must be supportable on a rational basis.

Arkla Exploration Co., 25 IBLA 220 (June 21, 1976)

Frances J. Richmond, 29 IBLA 137 (Mar. 3, 1977)

In the absence of specific statutory authority to lease, the Secretary of the Interior has implied authority, as guardian of the public's natural resources, to lease an oil and gas deposit under his jurisdiction when it is in danger of being drained by wells drilled on adjacent land. However, such protective leases may be issued only by competitive bidding.

James L. Scott, 25 IBLA 390 (July 6, 1976)

The requirement that a bidder in a competitive oil and gas lease sale must submit one-fifth of the amount bid with his bid is mandatory and will not be waived.

Sarkeys, Inc., 26 IBLA 181 (Aug. 2, 1976)

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale on the basis of an inadequate bonus where the rejection has a reasonable basis in fact.

Where high bids tendered at a competitive oil and gas lease sale, which are not clearly spurious or irresponsible, are rejected solely on the basis of a statement by an official that the bids are inadequate and no factual basis for that conclusion appears in the case record, the decision will be set aside and the cases remanded for compilation of a proper record and readjudication of the acceptability of the bids.

Yates Petroleum Corp., 27 IBLA 224 (Oct. 12, 1976)

Where the ostensible high bidder for an oil and gas lease sold by competitive bidding is determined to be unqualified under the regulations and notice of sale, and the second high bid, proper in all respects, greatly exceeds the Government's presale evaluation for the parcel, it is proper to consider such second high bid and to issue a lease therefor, if it is in the Government's best interest to do so.

Phillips Petroleum Co., 28 IBLA 175 (Nov. 24, 1976)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The provisions of 30 U.S.C. §§ 188(b) and (c) (1970), and decisions of the Board discussing those provisions, are generally applicable to both competitive and noncompetitive oil and gas leases on which there is no well capable of producing oil or gas in paying quantities.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

In order to constitute a clear and definite offer, a bid for an outer continental shelf oil and gas lease must adequately identify the tract which is the subject of the bid.

It is not the responsibility of Bureau of Land Management employees to decipher ambiguous bids for outer continental shelf oil and gas leases in order to save the bidder from the consequences of his own negligence. A bid which was apparently intended for one tract and contains data appropriate for that tract, but identifies a different tract as the subject of the bid, is properly considered, and rejected as too low, for the identified tract.

A rejected bid in an outer continental shelf oil and gas lease sale may be reconsidered and accepted when it is in the public interest to do so. The essential elements in allowing such a reconsideration are the fairness and impartiality of the sale toward all bidders. In a situation where a bid was initially rejected as too low for the tract identified in the bid and the bidder immediately requests reconsideration because he intended to bid for a different tract, where the tract number stated in the bid corresponds to the block number of the intended tract, where all other relevant data in the bid corresponds to the intended tract and only to the intended tract, and where no other person submitted a bid for the intended tract, it is proper to reconsider the bid to determine if it is in the public interest to accept the bid for the intended tract.

Alaska Oil and Minerals Corp., 29 IBLA 224 (Mar. 23, 1977)
84 I.D. 116

A rejection of a high bid tendered for a parcel of land offered at a sale of competitive oil and gas leases will be affirmed on appeal where the record contains sufficient information from the U.S. Geological Survey to establish that the pre-sale minimum evaluation for the tract, which greatly exceeded the rejected bid, was not arbitrary or capricious, it having been arrived at by a lease sale committee consisting of two geologists and three engineers which in addition to considering the results of a computer analysis took into account a hand compilation and the judgment and knowledge of the committee.

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Coquina Oil Corp., 29 IBLA 310 (Mar. 30, 1977)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Where the high bid tendered at a competitive onshore oil and gas lease sale is not clearly spurious or irresponsible, and is rejected solely on the basis of a statement by an official that the bid is inadequate and no factual basis for that conclusion appears in

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

the case record, the decision will be set aside and the case remanded for readjudication of the acceptability of the bid.

Yates Petroleum Corp., 32 IBLA 196 (Sept. 15, 1977)

The Bureau of Land Management may not accept a bid in a competitive lease sale where the bid proposes a royalty different from that set out in the lease sale notice.

In a competitive lease sale, the royalty provisions in the lease are those specified in the notice of sale.

The highest bidder in a competitive lease sale does not forfeit his deposit of one-fifth the amount of the bid where he is ineligible to be awarded the lease because he conditions his bid upon royalty provisions other than those set out in the lease sale notice.

Lee E. Loeffler, 33 IBLA 18 (Nov. 22, 1977)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Where the high bid tendered at a competitive onshore oil and gas lease sale is not clearly spurious or irresponsible, and is rejected solely on the basis of a statement by an official that the bid is inadequate and no factual basis for that conclusion appears in the case record, the decision will be set aside and the case remanded.

Basil W. Beasel, 34 IBLA 29 (Feb. 16, 1978)

BLM is without authority to alter an ambiguous competitive oil and gas lease bid in order to make it valid.

R. E. Price, 34 IBLA 61 (Feb. 16, 1978)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Where the high bid tendered at a competitive upland oil and gas lease sale, which is not clearly spurious or irresponsible, is rejected solely on the basis of a conclusory statement that the bid is inadequate and the factual basis for that conclusion does not appear in the case record, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Gerald S. Ostrowski, 34 IBLA 254 (Mar. 28, 1978)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

Before issuance of a competitive oil and gas lease for land within the area of an approved unit agreement, it is proper to require the successful bidder to file evidence that he has entered into an agreement with the unit operator for development of the land in the lease under the terms and provisions of the approved unit agreement or to file a statement giving satisfactory reasons for failure to enter such agreement.

Where high bidder for a competitive oil and gas lease within the area of an approved unit agreement fails to file evidence showing joinder to the unit agreement or to submit satisfactory reasons for failure to enter into agreement with the unit operator, it is proper to reject his bid and to refund the bonus payment tendered with the bid.

Gordon H. Barrows, 36 IBLA 160 (July 31, 1978)

Where a high bid was timely filed prior to the deadline for bids, but was subsequently mislaid by BLM and was not relocated until after another lower bid was declared high, BLM properly accepted the true high bid and retracted its declaration regarding the lower bid.

Jack M. Chodar, 36 IBLA 324 (Aug. 23, 1978)

The failure of a high bidder, in an upland competitive lease sale, to submit one-fifth of the amount bid with his bid in the proper form of remittance, may not be waived where the bidder submitted a sight draft, and thus retained control of the fund until presentment and final payment.

Mesa Petroleum Co., 37 IBLA .03 (Sept. 28, 1978)

Where the high bidder in a competitive oil and gas lease sale submits a bid in which the per acre component bid is inconsistent with the total bid, clarification of the bid will be permitted where the intent of the bidder is discernible from the evidence of the bid form, itself.

Patrick Petroleum Corp., 38 IBLA 93 (Nov. 15, 1978)

Where the high bid tendered at a competitive upland oil and gas lease sale, which is not clearly spurious or irresponsible, is rejected, and on appeal the offeror makes assertions which, if true, would undermine the factual basis for the rejection of the offer, the decision rejecting the offer will be set aside and the case remanded for the compilation of a more complete record and readjudication of the acceptability of the bid.

Ojai Oil Co., 39 IBLA 173 (Jan. 30, 1979)

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale on the basis of an inadequate bonus where the rejection has a reasonable basis in fact.

Where high bids tendered at a competitive oil and gas lease sale, which are not clearly spurious or irresponsible, are rejected solely on the basis of a conclusory statement by an official of the Geological Survey that the bids are inadequate, and no factual basis for that conclusion appears in the case record, and a request for supporting documentation has been refused, the decision will be reversed as arbitrary and capricious.

Steven and Mary Lutz, 39 IBLA 386 (Feb. 28, 1979)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

Under 43 CFR 3120.3-1, rejection of the high bid tendered for a parcel of land offered at a sale of competitive oil and gas leases will be affirmed where there is a rational basis for the conclusion that the highest bid was too low.

R. E. Price, 40 IBLA 85 (Mar. 22, 1979)

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale on the basis of an inadequate bonus where the rejection has a reasonable basis in fact.

Where a high bid tendered at an uplands competitive oil and gas lease sale, which is not clearly spurious or irresponsible, is rejected solely on the basis of statements by an official of the Geological Survey that the bid is inadequate, and no substantial factual basis for that conclusion appears in the case record, and a request for supporting documentation has been refused by the Geological Survey, the decision will be reversed and the case remanded to the Bureau of Land Management for its evaluation of the acceptability of the bids.

Charles B. Hinkle, Chevron, U.S.A., Inc., 40 IBLA 250 (Apr. 16, 1979)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Where an uplands competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose the factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Southern Union Exploration Co., 41 IBLA 81 (May 31, 1979)

The requirement of forfeiture of the bid deposit if the qualified high bidder fails to enter a lease must be enforced to prevent those bidders with greater capital resources from gaining an unfair advantage.

Fred S. Gheleraducci, 41 IBLA 277 (June 28, 1979)

Failure to execute a lease results in forfeiture of the bid deposit by the high bidder in a competitive oil and gas lease sale.

Bernard F. Gencorelli, 43 IBLA 7 (Sept. 11, 1979)

Where the notice of a competitive oil and gas lease sale clearly provided that the lease would be subject to stipulations, by making a bid, the offeror was bound to accept the stipulations.

Falcon Oil and Gas Co., 43 IBLA 115 (Sept. 24, 1979)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

Under 43 CFR Part 3120 an oil and gas "bid" must be submitted as well as a deposit, and where neither a per acre nor total bid amount is included, the bid submission must be rejected despite argument the bids amounts may be determined from the deposit amount.

Davis Oil Co., 43 IBLA 320 (Oct. 22, 1979)

Under 43 CFR 3120.3-1, the United States reserves the right to reject all bids, but any rejection must be based on a record sufficient to establish that the rejection has a reasonable basis in fact.

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Under 43 CFR 3120.3-1, rejection of a high bid tendered at a sale of competitive oil and gas leases will be affirmed on appeal where the case file contains memoranda from the U.S. Geological Survey sufficient to establish that the rejection has a reasonable basis in fact.

Gerald S. Ostrowski (On Reconsideration after Remand), 44 IBLA 17 (Nov. 6, 1979)

Rejection of the high bid tendered for a parcel of land offered at a competitive oil and gas lease sale will be affirmed on appeal where it is supported on a rational basis by uncontradicted U.S. Geological Survey memoranda.

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Basil W. Beagel, 44 IBLA 62 (Nov. 20, 1979)

CONSENT OF AGENCY

Where the Forest Service suggests a stipulation barring any occupancy and use of the surface as a condition precedent to the issuance of an oil and gas lease for public lands in a national forest, based only on the fact that the land is in an "inventoried roadless area," and where later the Forest Service agrees to a revised stipulation, the Bureau of Land Management decision to the extent it required the execution and filing of the "Roadless Area" stipulation will be set aside and the case remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

James A. Krumhansl, 19 IBLA 56 (Feb. 21, 1975)

Where the Forest Service requests a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, based on the fact that the land is in an "inventoried roadless area," and where the Forest Service later substitutes a less restrictive stipulation, a Bureau of Land Management decision requiring the execution and filing of the roadless area stipulation will be vacated and the case will be remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

Benjamin T. Franklin, 19 IBLA 94 (Mar. 4, 1975)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

Where an application to lease land under the jurisdiction of another agency is rejected because of objections by that agency, and where on appeal that agency subsequently agrees to lease the land subject to certain special stipulations, such stipulations will be submitted to the offeror for execution.

Shell Oil Co., 20 IBLA 282 (May 27, 1975)

The Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Frederick L. Smith, 21 IBLA 239 (Aug. 11, 1975)

Sallie E. Sanford, 24 IBLA 31 (Feb. 17, 1976)

Charles F. Bajek and Frederick L. Smith, 29 IBLA 330 (Mar. 31, 1977)

Geo, Inc., 34 IBLA 27 (Feb. 14, 1978)

Where the Forest Service requests imposition of a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, the case will be set aside and remanded for consideration of a less stringent stipulation which the Forest Service has agreed to in other cases arising in the same and other national forests in Utah.

G. W. Anderson, 21 IBLA 328 (Aug. 14, 1975)

The execution of special stipulations as a condition precedent to issuance of oil and gas lease for land located in a national forest may be required at the discretion of the Secretary of the Interior in order to protect environmental and other land use values. The need for the stipulation should be clear and the stipulation should be a reasonable means to the intended purpose. The Forest Service's recommended stipulations will be carefully considered by the Department, but the final authority for oil and gas leasing on public domain land rests in this Department.

Earl B. Wilson, 21 IBLA 392 (Aug. 27, 1975)

The execution of special stipulations as a condition precedent to the issuance of oil and gas leases for land located in national forests may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

Bill J. Maddox, 22 IBLA 97 (Sept. 22, 1975)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect identifiable resource values as a condition precedent to issuance of an oil and gas lease. Stipulations proposed by the Forest Service will be carefully considered by this Department, but the final decision for oil and gas leasing on public domain land rests with this Department. A "no surface occupancy" stipulation proposed in order to protect a recreation area cannot

CONSENT OF AGENCY--Continued

stand if it might preclude surface occupancy unreasonably beyond the boundaries of the recreation area.

Beverley Lasrich, 22 IBLA 202 (Oct. 15, 1975)

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the land as a condition precedent to the issuance of the lease, or suffer rejection of the offer.

Sallie B. Sanford, 22 IBLA 289 (Oct. 30, 1975)

National forest public lands which have not been withdrawn from oil and gas leasing but are under study by the Forest Service as a proposed wilderness area are available for leasing in the discretion of, and under conditions imposed by, the Secretary of the Interior. Such discretion is not properly exercised when the Bureau of Land Management rejects an offer solely upon the recommendation of the Forest Service that land is a "candidate" for a proposed wilderness area without making an independent determination that leasing, with appropriate protective stipulations, is or is not in the public interest.

Esdras K. Hartley, 23 IBLA 102 (Dec. 23, 1975)

The recommendations of the Forest Service are important in determining whether or not an oil and gas lease should issue for public lands but are not conclusive. Ultimately, the Secretary of the Interior is entrusted with the responsibility of determining whether or not to issue a lease.

Where the Bureau of Land Management rejects an oil and gas lease offer for public lands within a national forest solely on the objection of the Forest Service and where the Bureau officials did not make an independent determination whether leasing the lands is or is not in the public interest, the rejection is not a proper exercise of discretion and the case will be remanded to the Bureau for further consideration.

Stanley M. Edwards, 24 IBLA 12 (Feb. 4, 1976)
83 I.D. 33

The Mineral Leasing Act of 1920 vests the Department of the Interior with the discretion to lease public lands for oil and gas, including public lands in the national forests. Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing.

Chevron Oil Co., 24 IBLA 159 (Mar. 15, 1976)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where a Bureau of Land Management districtwide environmental analysis record establishes the likelihood that significant archaeological values are prevalent in the district and may be found in the land embraced by leases in that district, a special protective stipulation is not unreasonable solely because no archaeological values have yet been discovered in the lease offer.

Cecil A. Walker, Alan C. F. Dille', 26 IBLA 71 (July 9, 1976)

CONSENT OF AGENCY--Continued

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without a showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated basis for the imposition of the stipulation is the threat of oil and gas activities to automobile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern K. Jones et al., 26 IBLA 165 (Aug. 4, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether the lease, with stipulations, should be issued. A case will be remanded for such a determination especially where the Forest Service on appeal has reconsidered and recommends leasing with certain stipulations.

Fred P. Blume, 28 IBLA 58 (Nov. 9, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether not to issue a lease or whether issuance of a lease subject to appropriate stipulations is in the public interest. A case will be remanded to the Bureau of Land Management for an independent determination where it is evident that such has not been done.

Kenneth F. Cummings and A. W. Fleming, Empire Resources, Inc., 28 IBLA 73 (Nov. 12, 1976)

Under the Mineral Leasing Act for Acquired Lands of 1947, *as amended*, 30 U.S.C. §§ 351-359 (1970), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the consent of the Secretary of the Interior, is necessary under the Act to the leasing of the land. Where the National Park Service recommends that oil and gas leases for lands within the boundaries of the Chickasaw National Recreation Area be rejected in order to maintain the area for the purposes for which it was established, it is proper to accept this recommendation and reject the offers.

Daphine Shear, David L. Shear, 29 IBLA 33 (Feb. 10, 1977)

The Bureau of Land Management must reject a noncompetitive oil and gas lease offer for acquired lands under the jurisdiction of the Department of the Air Force where the latter agency withholds its consent from the issuance of a lease.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

OIL AND GAS LEASES--Continued

CONTRACTS FOR SALE OF ROYALTY OIL OR GAS

The Department may not sell royalty oil to an ineligible refinery, unless the Secretary of the Interior finds that the crude oil needs of refiners eligible to purchase crude oil under 30 U.S.C. § 192 (1970) are being met in the open market.

A regulation defining "eligible refiners" under the Act of July 13, 1946, providing for the sale of Government royalty oil or gas, as owners of existing refineries (including refineries not in operation) who qualify as a small business enterprise under the rules of the Small Business Administration and who are unable to purchase in the open market an adequate supply of crude oil to meet the needs of their existing refinery capacities, is an implementation of the Act within the ambit of the Secretary of the Interior's authority to prescribe rules and regulations.

Thunderbird Resources, Inc., 20 IBLA 248 (May 16, 1975)

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

A. Johnson & Co., Inc., 38 IBLA 182 (Dec. 6, 1978)

DESCRIPTION OF LAND

An oil and gas lease offer will not be rejected on the basis of a defective land description merely because some of the land applied for is not available for leasing where the offeror has submitted advance rental for all of the land described. Generally, where an offer describes an entire section and only part of that land is available for leasing, a lease will be issued for the land available and the offer rejected for the balance of the land in the section.

The description of an entire section of land modified by the word "available" in an oil and gas lease application is an offer to lease all of that section, subject to availability for leasing. An offer containing such a description need not be rejected for lack of a legally sufficient description where the offer is accompanied by the required rent for all of the land described therein.

Milan S. Papulak, 30 IBLA 77 (Apr. 18, 1977)

BLM is not required to alter, modify, or correct an over-the-counter oil and gas lease offer in order to resolve a disparity in the land description contained therein.

C. C. Hughes, 33 IBLA 237 (Dec. 28, 1977)

Where an offer for an oil and gas lease describes lands in a section number followed by several aliquot parts and concludes with the words "(all available)," those words refer only to lands available within the aliquot parts and not to other aliquot parts of the section not specifically listed.

Jean Oakason, 34 IBLA 355 (Apr. 26, 1978)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

A metes and bounds description, with courses and distances between successive angle points and appropriate ties to the nearest official survey corner, is properly required pursuant to 43 CFR 3101.2-3(a) where the description of lands in an oil and gas lease offer cannot be conformed to the public land surveys.

Wilfred Plomis, 44 IBLA 264 (Dec. 19, 1979)

DISCRETION TO LEASE

The Department has discretionary authority to issue or not to issue leases under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970).

In exercising its discretion to lease or not to lease oil and gas under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970), the Department may reject an oil and gas lease offer filed thereunder, where the minerals are held in trust for the Shoshone and Arapaho Indians and are leasable under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Co., 18 IBLA 326 (Jan. 7, 1975)

Where an oil and gas lease offer for public lands within 1 mile of the exterior boundaries of a naval petroleum reserve is rejected because the Department of the Navy recommends against the leasing of the land despite the Geological Survey's determination that operations on the subject land would not adversely affect the naval reserve through drainage from known productive horizons, the decision rejecting the lease offer will be reversed. The recommendations of the Federal agency exercising jurisdiction over a naval petroleum reserve, while important, are not conclusive. The final determination rests with the Department, and where the Geological Survey after full consideration of pertinent technical considerations recommends leasing, a lease will issue.

R. Garvin Berry, Jr., 18 IBLA 331 (Jan. 9, 1975)

Oil and gas lease offers embracing lands within an area under consideration as a potential wild and scenic river area pursuant to sec. 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1276(d) (1970), or within adjacent areas having special resource values which might be damaged by oil and gas leasing may be properly rejected in the exercise of the Secretary's discretion in leasing.

John Oakason, Beard Oil Co., 19 IBLA 191 (Mar. 18, 1975)

Rosita Trujillo, 21 IBLA 289 (Aug. 11, 1975)

Under the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 181 *et seq.* (1970), the first-qualified applicant has a preference right to receive an oil and gas lease where the Department of the Interior has in the exercise of its discretion, determined to issue such a lease. But a lease offer does not create a vested interest where there has been no determination to lease the lands embraced in the lease offer. In the latter instance, the application for a lease is a hope or expectation rather than a valid claim against the Government, and the lease offeror has acquired no rights which are violated by issuance of a patent to the State of Alaska for the lands embraced in the lease offer.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Department of the Interior has full and final authority to determine whether or not to issue oil and gas leases. Where the lands embraced within an oil and gas lease offer contain established archaeological sites and in the opinion of the responsible Departmental officials oil and gas exploration activities would destroy or impair the sites, a lease offer is properly rejected, absent an affirmative showing on behalf of the offeror that exploration activities would not infringe upon the archaeological resources of the area.

Rosita Trujillo, 20 IBLA 54 (Apr. 24, 1975)

Sec. 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims does not apply to an oil and gas lease offer filed pursuant to the Mineral Leasing Act of 1920. While an oil and gas lease offeror may have a right to a lease where the Department has exercised its discretion to issue a lease, and the offeror is entitled to a statutory priority right over other offerors, his application does not rise to the level of a "claim" or "right" within the savings clause of the Alaska Statehood Act where there has been no such determination to lease.

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first-qualified applicant in the event the Department decides to issue a lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975)
82 I.D. 174

An offer for an oil and gas lease under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

Shell Oil Co., 20 IBLA 292 (May 27, 1975)

Under sec. 17 of the Mineral Leasing Act of 1920, *as amended*, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, *as amended*.

The Secretary's authority to withdraw public lands is separate from, and in addition to, the Secretary's discretionary authority under sec. 17 of the Mineral Leasing Act of 1920, *as amended*. Therefore, public lands which are described in a public land order as not withdrawn from leasing under the mineral leasing laws remain subject to an exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, *as amended*.

T. R. Young, Jr., 20 IBLA 333 (June 11, 1975)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The prohibition in 43 CFR 3101.3-3(a)(1) against leasing for oil and gas in wildlife refuge lands, except where there is drainage, applies to areas withdrawn for waterfowl production, even though the withdrawal order did not prohibit leasing. Offers for such lands and lakebeds riparian thereto are properly rejected.

A. G. Golden, 21 IBLA 76 (June 25, 1975)

On appeal from decision(s) rejecting oil and gas lease offer(s) insofar as they include land(s) within a lava flow under consideraton for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the land(s) under a no-surface-occupancy stipulation, and the offeror(s) indicate they would accept such a stipulation for all the land(s) at issue, the decision(s) will be set aside and the case(s) remanded for consideration of issuance of lease(s) containing no-surface-occupancy stipulation(s) on the land(s) in the lava flow.

Houston Oil and Minerals Corp., Leland A. Hodges (Trustee), 22 IBLA 172 (Sept. 30, 1975)

Leland A. Hodges (Trustee), 23 IBLA 142 (Dec. 23, 1975)

The provisions of the Mineral Leasing Act for Acquired Lands, 61 Stat. 913, 30 U.S.C. § 351 *et seq.* (1970), and those of the Mineral Leasing Act, 41 Stat. 437, 30 U.S.C. § 181 *et seq.* (1970), authorize the Secretary of the Interior to reject high bids for upland oil and gas leases based on the inadequacy of the bonus bid if such rejection has a reasonable basis in fact.

H & W Oil Co., Inc., 22 IBLA 313 (Nov. 10, 1975)

National forest public lands which have not been withdrawn from oil and gas leasing but are under study by the Forest Service as a proposed wilderness area are available for leasing in the discretion of, and under conditions imposed by, the Secretary of the Interior. Such discretion is not properly exercised when the Bureau of Land Management rejects an offer solely upon the recommendation of the Forest Service that land is a "candidate" for a proposed wilderness area without making an independent determination that leasing, with appropriate protective stipulations, is or is not in the public interest.

Esdras K. Hartley, 23 IBLA 102 (Dec. 23, 1975)

In the absence of a withdrawal of land from mineral leasing, public lands are subject to leasing for oil and gas in the discretion of and under conditions imposed by the Secretary of the Interior.

Where the Bureau of Land Management rejects an oil and gas lease offer for public lands within a national forest solely on the objection of the Forest Service and where the Bureau officials did not make an independent determination whether leasing the lands is or is not in the public interest, the rejection is not a proper exercise of discretion and the case will be remanded to the Bureau for further consideration.

Stanley T. Edwards, 24 IBLA 12 (Feb. 4, 1976)
83 I.D. 33

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

While the Secretary of the Interior has the authority to reject oil and gas lease offers in the public interest, such rejection must be rationally related to that public interest. Where an offer to lease lands in an "elk winter pasture" is rejected a few months after issuing a similar lease to another person for lands within the same area, which lands are apparently indistinguishable from the lands in the rejected lease offer, such offer will be remanded for reconsideration.

L. A. Idler, 24 IBLA 28 (Feb. 11, 1976)

National forest lands, some of which are in a wilderness area, a roadless area, or a memorial parkway, which have not been withdrawn from oil and gas leasing, are subject to leasing in the discretion of and under conditions imposed by the Secretary of the Interior. However, where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his plenary discretion to refuse to issue leases, and subsequent offers for lands in this designated area restricted from leasing are properly rejected.

James Donoghue et al., 24 IBLA 210 (Mar. 23, 1976)

Uncertainty of title to oil and gas in an acquired land tract is sufficient ground for the rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. The burden is on the lease applicant to demonstrate that the minerals he seeks to lease are owned by the United States as an acquired interest. A decision rejecting an offer will be affirmed where appellant has failed to meet this burden and a significant question of title remains.

Don Jumper, 24 IBLA 218 (Mar. 24, 1976)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act.

While the Bureau of Land Management may reject oil and gas lease offers or require stringent protective stipulations in order to protect the environment, such action must be supported by facts of record. Where such action is taken and is supported only by statements that leasing would not be in the public interest, the case will be remanded to the Bureau for a more complete exposition of the basis for the action.

Cartridge Syndicate, 25 IBLA 57 (May 20, 1976)

When the Secretary of the Interior determines that an oil and gas lease is to be issued for a particular tract, it must be issued to the first-qualified applicant. An applicant is not qualified because of his failure to comply with 43 CFR 3112.2-1(a) when he fails to provide the name of the State in which the parcel of land is located.

Ishmael Guerra, 26 IBLA 116 (July 26, 1976)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without a showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated basis for the imposition of the stipulation is the threat of oil and gas activities to automobile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern K. Jones et al., 26 IBLA 165 (Aug. 4, 1976)

The Secretary has discretionary authority to reject an oil and gas lease offer where Federal title to the oil and gas deposits is uncertain.

Leonard E. McSwain, David A. Provinse, 26 IBLA 376 (Sept. 9, 1976)

Where title to the minerals in a tract of acquired land which is the subject of an oil and gas lease offer cannot be determined from records in the possession of the BLM, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. Applicant may be required to furnish evidence from the county recorder's office in the nature of a title abstract sufficient to allow the Solicitor to render a legal opinion regarding title to the oil and gas in the tract sought for leasing. Rejection of the offer in the exercise of the Secretary's discretion over leasing is proper where applicant declines to provide such information.

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant is not sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a United States interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Jean Oakason, 27 IBLA 41 (Sept. 22, 1976)

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale on the basis of an inadequate bonus where the rejection has a reasonable basis in fact.

Yates Petroleum Corp., 27 IBLA 224 (Oct. 12, 1976)

Steven and Mary Lutz, 39 IBLA 386 (Feb. 28, 1979)

Charles B. Hinkle, Chevron, U.S.A., Inc., 40 IBLA 250 (Apr. 16, 1979)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. Where the land is part of a designated winter pasture for a large elk herd, and it has been determined that oil and gas operations would adversely

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

affect that use of the land to a substantial extent, rejection of the lease offer will be affirmed.

L. A. Idler (Supp.), 28 IBLA 8 (Nov. 5, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether the lease, with stipulations, should be issued. A case will be remanded for such a determination especially where the Forest Service on appeal has reconsidered and recommends leasing with certain stipulations.

Fred P. Blume, 28 IBLA 58 (Nov. 9, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether not to issue a lease or whether issuance of a lease subject to appropriate stipulations is in the public interest. A case will be remanded to the Bureau of Land Management for an independent determination where it is evident that such has not been done.

Kenneth F. Cummings and A. W. Fleming, Empire Resources, Inc., 28 IBLA 73 (Nov. 12, 1976)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest.

The Secretary of the Interior may reject a noncompetitive offer to lease for oil and gas when he determines that it is in the public interest to do so because the lands applied for are within the Interstate 70 scenic corridor and are under consideration for inclusion in a primitive area.

The Secretary in the exercise of his discretionary authority, may refuse to lease public lands for oil and gas, even though the lands are not withdrawn from oil and gas leasing.

Pinnacle Mining and Exploration Co., Inc., 28 IBLA 249 (Dec. 20, 1976)

Neither the filing of an over-the-counter oil and gas lease offer, nor the holding of a drawing of simultaneously filed offers to determine the first-qualified offeror, creates any right to a lease or any property rights in the offeror that diminish the Secretary's discretion whether or not to issue a noncompetitive oil and gas lease on a given tract.

An oil and gas lease is not *issued* until it is signed by the authorized officer; the acceptance of first year's rental in advance as required by regulation does not create a lease contract. Until lease issuance, the Secretary retains his discretion to lease or not to lease a given tract.

James W. Canon et al., 1 SEC. 1 (Apr. 15, 1977)
84 I.D. 176

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to promulgate a Public Land Order closing an area of public lands to oil and gas leasing for the purpose of preserving and developing the potash deposits therein belonging to the United States, it is proper to reject oil and gas lease offers for such withdrawn lands.

AA Minerals Corp., 30 IBLA 259 (May 31, 1977)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act.

Duncan Miller, 30 IBLA 350 (June 8, 1977)

Duncan Miller, 31 IBLA 351 (July 25, 1977)

Duncan Miller, 31 IBLA 371 (Aug. 4, 1977)

Robert P. Kunkel, 41 IBLA 77 (May 31, 1979)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Yates Petroleum Corp., 32 IBLA 196 (Sept. 15, 1977)

Basil W. Beagel, 34 IBLA 29 (Feb. 14, 1978)

Gerald S. Ostrowski, 34 IBLA 254 (Mar. 28, 1978)

Southern Union Exploration Co., 41 IBLA 81 (May 31, 1979)

The Secretary of the Interior may in his discretion reject any offer to lease public lands for oil and gas upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. Where part of the lands applied for are in the Bonneville Salt Flats, and the Bureau of Land Management determines that oil and gas leasing activities are not compatible with the primary management objective to prevent irreparable damage to a significant resource, rejection of the lease offers or the requirement of execution of surface occupancy stipulations will be affirmed.

Vern K. Jones et al., Esdras K. Hartley, 33 IBLA 74 (Dec. 6, 1977)

The decision to issue an oil and gas lease to the first-qualified offeror is within the discretion of the Secretary of the Interior, and offers within proposed wild and scenic river areas may be rejected to protect such areas.

Questa Petroleum Co., 33 IBLA 116 (Dec. 16, 1977)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

Oil and gas lease offers may be rejected where legal title to the lands in issue is uncertain. It is not improper for BLM to refuse to suspend the offers pending determination of the title issue.

N L Industries, Inc., 34 IBLA 99 (Feb. 23, 1978)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land is being used as a habitat for endangered animals, is a natural scenic asset, and has potential recreational value, and where BLM determines that oil and gas operation would result in unavoidable adverse impact on these attributes, rejection of the lease offer will be affirmed in the absence of countervailing compelling reasons.

Dell K. Hatch, Amoco Production Co., 34 IBLA 274 (Apr. 11, 1978)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. Oil and gas lease offers within area proposed for inclusion in the wild and scenic river system may be rejected to protect such areas.

Dean W. Howell, 37 IBLA 387 (Nov. 6, 1978)

The BLM may reject any offer to lease public lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land is being used as a habitat for mule deer and elk, is a natural scenic asset, and has recreational, archaeological and paleontological values, and where BLM determines that oil and gas drilling operations would result in unavoidable adverse impact on these attributes, rejection of the lease offer will be affirmed, in the absence of compelling countervailing reasons.

James O. Breene, Jr., 38 IBLA 281 (Dec. 13, 1978)

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, and the regulations issued pursuant to that Act, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease. The Secretary, through BLM, his duly authorized representative, may reject any offer to lease public lands for oil and gas upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. When the land, situated in Hell's Half Acre, has geological, ecological, scenic, and recreational values and is under study for its wilderness potential, and where BLM recommends that the lands not be leased pending further studies of the area, rejection of the lease offer will be affirmed, in the absence of compelling countervailing reasons.

R. C. Hoefle, 41 IBLA 174 (June 22, 1979)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

A decision rejecting an oil and gas lease offer because it would result in undue degradation of the environment will be set aside where the record does not clearly support the conclusion reached by BLM.

John M. Lefkion, 43 IBLA 67 (Sept. 19, 1979)

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976), the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976).

Tucker and Snyder Exploration, Inc., 43 IBLA 235 (Oct. 10, 1979)

It is within the discretion of the Bureau of Land Management to impose the requirement of a no surface occupancy stipulation upon an oil and gas lease, where there has been a determination that it is in the public interest to do so because the lands applied for have important archaeological values, are within the Interstate 70 scenic corridor, and are under consideration for inclusion in a primitive area.

James M. Chudnow, 43 IBLA 375 (Oct. 31, 1979)

Under 43 CFR 3120.3-1, rejection of a high bid tendered at a sale of competitive oil and gas leases will be affirmed on appeal where the case file contains memoranda from the U.S. Geological Survey sufficient to establish that the rejection has a reasonable basis in fact.

Gerald S. Ostrowski (On Reconsideration after Remand), 44 IBLA 17 (Nov. 6, 1979)

The Secretary of the Interior has the authority to refuse to lease Federal lands for oil and gas purposes, even if the lands have not been withdrawn from the operation of the mineral leasing laws. The refusal to lease must be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings not so supported by factual data, are insufficient to predicate a rejection in the circumstances.

David H. Yates, 44 IBLA 121 (Nov. 27, 1979)

The Department, may, in its discretion, reject offers to lease public lands for oil and gas, but such rejections must be based on facts of record and background data indicating that leasing would be contrary to the public interest.

Placid Oil Co., 44 IBLA 209 (Dec. 11, 1979)

The Bureau of Land Management, on behalf of the Secretary of the Interior, may condition issuance of a lease on the execution of a no surface occupancy stipulation where on appeal the record shows that the Bureau has adequately considered the factors involved and the

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

stipulation is a reasonable means to accomplish proper Departmental purposes.

H. E. Shillander, 44 IBLA 216 (Dec. 11, 1979)

DRAINAGE

Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act, *as amended*, 30 U.S.C. § 181 (1970). If drainage occurs on such lands by reason of wells drilled on adjacent lands, agreements with the owners thereof may be entered into by the Bureau of Land Management pursuant to 43 CFR 3100.3.

Hawthorn Oil Co., 37 IBLA 91 (Sept. 22, 1978)

DRILLING

Where only preliminary steps had been taken looking toward conducting drilling operations by the expiration date of an oil and gas lease, but there were no actual drilling operations, a lease could not be extended under 30 U.S.C. § 226(e) (1970), however "primary term" of the lease in that section is defined in the regulations.

Inexco Oil Co., 20 IBLA 134 (May 5, 1975)

To qualify for a 2-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were diligently prosecuted on the leasehold on the last day of the lease term, with bona fide intent to complete a producing well, as demonstrated by subsequent circumstances, *i.e.*, by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

D. L. Cook, 20 IBLA 315 (June 4, 1975)

Charles M. Goad, 25 IBLA 130 (June 7, 1976)

Under the provisions of 43 CFR 3107.2-1(b)(2) (1973) an oil and gas lease which had been committed to a unit and extended as a result of production occurring within that unit, is not within its primary term but rather is held by production. Therefore, the diligent drilling extension provision of 43 CFR 3107.2-3 is not available as a method of further extension since that provision is limited to leases in their primary term.

Tenneco Oil Co., Sun Oil Co., 21 IBLA 130 (July 14, 1975)

To qualify for a 2-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were being diligently prosecuted on the leasehold on the last day of the lease term, with good faith intent to complete a producing well as demonstrated by all the circumstances. Where 1) approval of the Geological Survey had not been obtained for any drilling, 2) proper bonds had not been obtained before the expiration date of the leases, and 3) an adequate environmental analysis had not been filed, drilling that did occur on the last day of the leasehold was not diligent in good faith and the lease must be held to have expired.

Daisy E. Hook et al., 21 IBLA 147 (July 16, 1975)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date, even though the lease may also have production at that time.

Rio Blanco Natural Gas Co., 30 IBLA 191 (May 19, 1977)
84 I.D. 198

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date.

A unitized oil and gas lease is entitled to an extension for 2 years where production testing operations are being conducted on the unit well on the expiration date of the lease. Such testing qualifies as "actual drilling operations" as defined by 43 CFR 3107.2-1 which includes not only the physical drilling of a well, but the testing, completing, or equipping of such well for production of oil or gas.

Shell Oil Co., 36 IBLA 253 (Aug. 15, 1978)

To qualify for a 2-year extension of an oil and gas lease, pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with reference made to subsequent circumstances. Efforts to secure a large or full-size rig, which are frustrated by unforeseen delays on the part of the contractor supplying the rig so that "actual drilling operations" are not undertaken for more than 60 days do not constitute diligent drilling operations.

To qualify for a 2-year extension of an oil and gas lease pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with the good faith intent to complete a producing well as demonstrated by all of the circumstances. Where prior approval of the Geological Survey had not been obtained for a change in hole and casing arrangements, drilling that did occur on the last day of the lease term was not undertaken in good faith and the lease must be held to have expired.

Classic Mining Corp., 37 IBLA 338 (Oct. 27, 1978)

Nothing in the regulations requires an oil and gas lessee to request approval of a drilling plan from the Geological Survey more than 30 days in advance of the expiration of his lease. The regulations contemplate both a lessee's giving notice of intention to begin work and the district engineer's giving permission to proceed orally in cases of emergency.

An oil and gas lessee is required to post bond before he may initiate drilling operations on his lease. Where it is noted in a decision appealed from that

OIL AND GAS LEASES--Continued

DRILLING--Continued

neither the lessee nor his operator have posted bond, and the lessee does not controvert this fact on appeal, it is properly found that there was no bond coverage.

Where a lessee is required by law to post bond before commencing drilling and fails to do so, any drilling operations actually undertaken by him do not constitute "diligent prosecution" of "actual drilling operations" in good faith under 43 CFR 3107.2-3, and he is therefore not entitled to an extension of his lease.

Richard P. Smoot, 39 IBLA 1 (Jan. 8, 1979)

The actions of a lessee in reentering a well to a depth of 11,640 feet where said well has been previously drilled to a depth of 12,895 feet do not constitute actual drilling operations within the terms of 30 U.S.C. § 226(e) (1976) so as to entitle the lessee to a 2-year extension of an oil and gas lease by drilling over the terminal date of the lease.

To obtain an extension to an oil and gas lease by drilling over the terminal date, actual drilling operations must be conducted in such a way as to be an effort which one seriously looking for oil and gas could be expected to make in that particular area, given existing knowledge of geological and other pertinent facts.

To qualify for an extension of a lease under 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were diligently pursued on the leasehold on the last day of the lease, with bona fide intent to complete a producing well, as demonstrated by circumstances, *e.g.*, by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

The bona fide intent of the lessee and the diligence with which he carries out that intent must be tested in accordance with the regulations, 43 CFR 3107.2-1 *et seq.*, not only by the activity in progress at midnight of the last day, but by what transpires subsequently.

Phoenix Resources Co., 39 IBLA 153 (Jan. 29, 1979)

An application for permit to drill for oil and gas in a designated Potash Area is properly denied where the applicant fails to show that his application comes within either of the two exceptions to the policy in favor of potash development enunciated in an Order of the Secretary, dated Oct. 7, 1975, 40 FR 51486.

Belco Petroleum Corp., 42 IBLA 150 (Aug. 16, 1979)

EXTENSIONS

Where only preliminary steps had been taken looking toward conducting drilling operations by the expiration date of an oil and gas lease, but there were no actual drilling operations, a lease could not be extended under 30 U.S.C. § 226(e) (1970), however "primary term" of the lease in that section is defined in the regulations.

Inexco Oil Co., 20 IBLA 134 (May 5, 1975)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

To qualify for a 2-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were diligently prosecuted on the leasehold on the last day of the lease term, with bona fide intent to complete a producing well, as demonstrated by circumstances; *e.g.*, by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

E. L. Cook, 20 IBLA 315 (June 4, 1975)

When an oil and gas lease, extended beyond the primary term because of production, no longer has a well capable of producing oil or gas in paying quantities, the lease terminates by operation of law if within 60 days after cessation of production no approved reworking or drilling operations are begun on the lease.

Estate of Anna Aronow, 20 IBLA 344 (June 11, 1975)

Under the provisions of 43 CFR 3107.2-1(b)(2) (1973) an oil and gas lease which had been committed to a unit and extended as a result of production occurring within that unit, is not within its primary term but rather is held by production. Therefore, the diligent drilling extention provision of 43 CFR 3107.2-3 is not available as a method of further extension since that provision is limited to leases in their primary term.

Tenneco Oil Co., Sun Oil Co., 21 IBLA 130 (July 14, 1975)

To qualify for a 2-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were being diligently prosecuted on the leasehold on the last day of the lease term, with good faith intent to complete a producing well as demonstrated by all the circumstances. Where 1) approval of the Geological Survey had not been obtained for any drilling, 2) proper bonds had not been obtained before the expiration date of the leases, and 3) an adequate environmental analysis had not been filed, drilling that did occur on the last day of the leasehold was not diligent in good faith and the lease must be held to have expired.

Daisy E. Hook et al., 21 IBLA 147 (July 16, 1975)

In order to support extension of an oil and gas lease on the basis of production within a pre-existing unit to which the lease was not previously committed, the lessee must reach an agreement with the parties to the unit agreement and the unit operating agreement in accordance with the procedures for subsequent joinder outlined therein and submit evidence of such agreement for approval of the Oil and Gas Supervisor, United States Geological Survey, prior to expiration of the lease. The mere sending of notice by the lessee to the Bureau of Land Management announcing his intention to commit his lease to an existing unit agreement is not sufficient.

Duncan Miller, 25 IBLA 125 (June 7, 1976)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

To qualify for a 2-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were diligently prosecuted on the leasehold on the last day of the lease term, with bona fide intent to complete a producing well as demonstrated by subsequent circumstances, *i.e.*, by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

Assertions, even if established, that employees of the Bureau of Land Management assured an oil and gas lessee that drilling a leasehold on the last day of the lease term was sufficient, without more, to extend the lease, and that the lessee relied upon such representations, afford the lessee no relief. Rights not authorized by law cannot be acquired through misinformation given by employees of the Bureau of Land Management.

Charles M. Goad, 25 IBLA 130 (June 7, 1976)

Where an oil and gas lease in its extended term because of production has ceased production for a known period and the Geological Survey questions whether the lease is currently capable of production, the lease will not terminate by operation of law if the lessee can show that any of three sets of conditions or circumstances exist: (1) reworking or drilling operations were begun on the lease within 60 days after cessation of production; (2) operations or production had been suspended by order or with the consent of the Secretary; and (3) the lessee can make an acceptable showing within 60 days after notice from the Survey that there is a well in a producing status on the leasehold.

Emily H. Oien, 25 IBLA 193 (June 16, 1976)

An oil and gas lease will expire by operation of law at the end of its primary term unless oil or gas is being produced in paying quantities at that time or actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted, thereby entitling the lessee to an extension of the lease. A once productive well which ceases its productive capability during the initial term will not prevent expiration of the lease.

Rajac Industries, Inc., 26 IBLA 202 (Aug. 11, 1976)

An oil and gas lease issued effective Oct. 1, 1966, for a term of 10 years expired at midnight on Sept. 30, 1976, unless extended by some provision of statute or regulation.

Duncan Miller, 28 IBLA 62 (Nov. 10, 1976)

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), he cannot obtain the extension.

The discretionary authority granted to the Secretary of the Interior by 30 U.S.C. § 188(d) (1970), to reinstate oil and gas leases terminated for failure to pay rental timely, which leases are eligible for extensions under 30 U.S.C. § 226-1(d) (1970), because drilling operations commenced prior to the end of the term of the lease and were being diligently prosecuted at that time, applies only to oil and gas leases issued before Sept. 2, 1960. An oil and gas lease issued after that date, which has terminated for failure to pay rental timely, can be reinstated only under the provisions of 30 U.S.C. § 188(c) (1970).

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

A Bureau of Land Management decision extending the lease term of an oil and gas lease for 2 years following the termination of the unit agreement of which the lease was a part is premature, where the lessee has appealed the Geological Survey's determination of the effective date of termination of the unit agreement. The Bureau of Land Management decision will be set aside and the case remanded to await the final outcome of the lessee's appeal of the Geological Survey determination.

Tenneco Oil Co., 29 IBLA 157 (Mar. 7, 1977)

An oil and gas lessee, who files the necessary subsequent joinder documents with the Area Oil and Gas Supervisor, Geological Survey, in accordance with the subsequent joinder procedures outlined in the unit agreement, will have his lease committed to the unit as of the date of filing with the Area Oil and Gas Supervisor for the purpose of extension of the lease on the basis of production within the unit. However, the commitment does not become effective for determining the benefits and obligations under the unit agreement, as to the parties to the agreement, until the first day of the month following the filing.

Bruce Anderson, 30 IBLA 179 (May 19, 1977)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date, even though the lease may also have production at that time.

Rio Blanco Natural Gas Co., 30 IBLA 191 (May 19, 1977)
84 I.D. 198

The lessee of an acquired lands oil and gas lease issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), the lease must be deemed to have terminated at the end of its stated term.

Shell Oil Co., 30 IBLA 290 (June 1, 1977)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

By the terms of the mineral leasing laws, unit agreement, and by regulation, unitized oil and gas leases issued after Sept. 2, 1960, which reach the end of a 2-year extended term by drilling expire by operation of law if there is not production of oil or gas in paying quantities within the unit at that time.

Corrine Grace, 30 IBLA 296 (June 1, 1977)

To qualify for a 2-year extension of an oil and gas lease under the diligent drilling provision of 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were being prosecuted on the leasehold on the last day of the lease term, with good faith intent to complete a producing well. Good faith attempts to initiate "actual drilling operations" which are frustrated by inclement weather, personnel shortages and equipment failures so that "actual drilling operations" are not being prosecuted on the lease on the last day of the lease term do not serve to gain the lease an extension.

Burton W. Hancock, 31 IBLA 18 (June 17, 1977)

Noncompetitive oil and gas leases are issued for a primary term of 10 years. Such leases expire automatically by operation of law at the end of their 10-year terms unless the presence of one of the statutory grounds for extension of the term is established.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1976).

Anne Burnett Tandy et al., 33 IBLA 106 (Dec. 16, 1977)

Texaco, Inc., 33 IBLA 296 (Jan. 10, 1978)

Texaco, Inc., 40 IBLA 294 (Apr. 27, 1979)

For a noncompetitive oil and gas lease issued subsequent to Sept. 2, 1960, to be entitled to a 2-year extension for drilling over, actual drilling operations must be commenced on the leasehold, or for the benefit of the leasehold under an approved cooperative or unit plan of development, prior to the end of the primary term of 10 years, and be diligently prosecuted at that time.

Where the term of a noncompetitive oil and gas lease issued subsequent to Sept. 2, 1960, has been extended beyond its 10-year primary term, and actual drilling operations are being conducted on the terminal date, there is no entitlement to a 2-year extension for drilling over unless the drilling operations were commenced prior to the end of the 10-year primary term and had been diligently prosecuted thereafter. It makes no difference whether the extension beyond the 10-year primary term was given because of segregation in accordance with 43 CFR 3107.4-3 (partial commitment of lease to an approved unit agreement), or because of elimination of lease from an approved unit agreement under 43 CFR 3107.5.

Yates Petroleum Corp., 34 IBLA 7 (Feb. 8, 1978)

Texaco, Inc., 34 IBLA 127 (Mar. 7, 1978)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date.

A unitized oil and gas lease is entitled to an extension for 2 years where production testing operations are being conducted on the unit well on the expiration date of the lease. Such testing qualifies as "actual drilling operations" as defined by 43 CFR 3107.2-1 which includes not only the physical drilling of a well, but the testing, completing, or equipping of such well for production of oil or gas.

Shell Oil Co., 36 IBLA 253 (Aug. 15, 1978)

Where a Federal oil and gas lessee commits a portion of his lease to a proposed unit agreement, thereafter assigns all that committed portion to another, which assignment is approved, and subsequently the proposed unit is approved by the Geological Survey, the lessee is not entitled to a 2-year extension under 30 U.S.C. § 226(j) (1970), for the retained portion of the lease.

R. M. Tully, 37 IBLA 62 (Sept. 18, 1978)

Noncompetitive oil and gas leases are issued for a primary term of 10 years. Unless one of the statutory grounds for extension is established, such leases expire by operation of law at the end of their primary term.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

James E. and Mary F. Groboski, 43 IBLA 94 (Sept. 19, 1979)

To qualify for a 2-year extension of an oil and gas lease under the diligent drilling provision of 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations, that is, penetration of the ground by a drilling bit, were being prosecuted on the lease, or under an approved cooperative or unit plan of development or operation for the benefit of the lease, on the last day of the primary term of the lease. Preliminary work including site preparation and grading of access road is not "actual drilling operations" sufficient to qualify the lease for an extension of 2 years.

Estelle Wolf et al., 37 IBLA 195 (Oct. 12, 1978)

To qualify for a 2-year extension of an oil and gas lease, pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with reference made to subsequent circumstances. Efforts to secure a large or full-size rig, which are frustrated by unforeseen delays on the part of the contractor supplying the rig so that "actual drilling operations" are not undertaken for more than 60 days do not constitute diligent drilling operations.

To qualify for a 2-year extension of an oil and gas lease pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with the good faith intent to complete a producing well as demonstrated by all of the circumstances. Where prior approval of the Geological Survey had not been obtained for a change in hole and casing arrangements, drilling that did occur on the last day of the lease term was not undertaken in good faith and the lease must be held to have expired.

Classic Mining Corp., 37 IBLA 338 (Oct. 27, 1978)

Nothing in the regulations requires an oil and gas lessee to request approval of a drilling plan from the Geological Survey more than 30 days in advance of the expiration of his lease. The regulations contemplate both a lessee's giving notice of intention to begin work and the district engineer's giving permission to proceed orally in cases of emergency.

An oil and gas lessee is required to post bond before he may initiate drilling operations on his lease. Where it is noted in a decision appealed from that neither the lessee nor his operator have posted bond, and the lessee does not controvert this fact on appeal, it is properly found that there was no bond coverage.

Where a lessee is required by law to post bond before commencing drilling and fails to do so, any drilling operations actually undertaken by him do not constitute "diligent prosecution" of "actual drilling operations" in good faith under 43 CFR 3107.2-3, and he is therefore not entitled to an extension of his lease.

Richard P. Smoot, 39 IBLA 1 (Jan. 8, 1979)

The actions of a lessee in reentering a well to a depth of 11,640 feet where said well has been previously drilled to a depth of 12,895 feet do not constitute actual drilling operations within the terms of 30 U.S.C. § 226(e) (1976) so as to entitle the lessee to a 2-year extension of an oil and gas lease by drilling over the terminal date of the lease.

To obtain an extension to an oil and gas lease by drilling over the terminal date, actual drilling operations must be conducted in such a way as to be an effort which one seriously looking for oil and gas could be expected to make in that particular area, given existing knowledge of geological and other pertinent facts.

To qualify for an extension of a lease under 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were diligently pursued on the leasehold on the last day of the lease, with bona fide intent to complete a producing well, as demonstrated by circumstances, *e.g.*, by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

The bona fide intent of the lessee and the diligence with which he carries out that intent must be tested in accordance with the regulations, 43 CFR 3107.2-1 *et seq.*, not only by the activity in progress at midnight of the last day, but by what transpires subsequently.

Phoenix Resources Co., 39 IBLA 153 (Jan. 29, 1979)

Where production has ceased on an oil and gas lease extended by production, and the record is unclear whether the conditions prescribed by 30 U.S.C. § 226(f) (1976) precluding termination of the lease have occurred, the case will be remanded to the Bureau of Land Management to reconsider with the Geological Survey if the lease has terminated, including a determination whether the lessee began reworking or drilling operations within 60 days after cessation of production and diligently prosecuted such operations before attaining production

as asserted by him on appeal. A hearing should be held, if necessary, to resolve disputed facts.

Vern R. Bolinder and Julienne J. Bolinder, 40 IBLA 164 (Apr. 3, 1979)

The provision in a unit agreement allowing suspension of production requirements for unavoidable delays does not supplant the lessee's responsibility to comply with the procedure set out in the regulation for obtaining a suspension. A written application for suspension must be filed in triplicate with the area oil and gas supervisor prior to the expiration of the leases.

Suspension of production requirements for leases on which there are no wells capable of producing in paying quantities must be approved by the Secretary; this authority is not delegated to other officers below the Secretarial level.

"A well capable of producing oil or gas in paying quantities." The provision in 30 U.S.C. § 226(f) (1976) referring to a well capable of producing oil or gas in paying quantities refers to a well which is actually in physical condition to produce a sufficient quantity of oil or gas to yield a reasonable profit over and above the costs of operating the well and marketing the product. A satisfactory test of a well to establish its capability as of the termination date is necessary. Evidence which only supports inferences is not sufficient, nor is a showing only of a potential prospect for profitable operation at some future time.

American Resources Management Corp., 40 IBLA 195 (Apr. 5, 1979)

An oil and gas lease is properly extended for 2 years pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3 where prior to the expiration of the primary term of the lease, the lease is committed to an approved cooperative unit or plan and actual drilling operations are being conducted on behalf of the lease within the unit plan. For the purpose of qualifying for the extension, the determinative date of approval of the unit agreement is the effective date of the approved agreement rather than the actual date it is signed by U.S. Geological Survey.

Integrity Oil and Gas Co., 42 IBLA 222 (Aug. 22, 1979)

A hearing is properly ordered where there exist issues of fact the resolution of which will determine whether an oil and gas lease concluding its primary term was converted from rental status to royalty status. Appellant shall have the burden of proof to establish by a preponderance of the evidence (a) that the Dolezal-Government #1 well was capable of producing oil and gas in paying quantities on Oct. 31, 1978, or (b) that there was a discovery of oil or gas in paying quantities on lease W 15891 on Oct. 31, 1978. If either (or both) of these propositions is established, the subject lease was not subject to automatic termination by law for failure to make timely rental payment.

Coronado Oil Co., 42 IBLA 235 (Aug. 22, 1979)

An oil and gas lease in its extended term because of the termination of an approved unit plan to which it was committed, on which lease there is no well capable of production in paying quantities, terminates automatically by operation of law where the annual rental is not paid on or before the anniversary date of the

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

lease. The pendency of an appeal regarding the termination date of the extension does not excuse the failure to maintain the lease in good standing by timely payment of the annual rental.

Tenneco Oil Co., Cordillera Corp., 44 IBLA 171 (Nov. 30, 1979)

FIRST-QUALIFIED APPLICANT

Where an unamended senior offer for a noncompetitive fractional oil and gas lease on acquired lands is not in compliance with 43 CFR 3130.4-4, a junior offer obtains priority to extent of conflicts between competing filings, and the junior offeror's protest must be sustained.

Frederick L. Smith et al., 19 IBLA 162 (Mar. 14, 1975)

Oil and gas lease applications, action on which was suspended under Public Land Order 4582, 34 FR 1025 (1969), are properly rejected when the lands are subsequently patented to the State of Alaska under selection applications even though the latter postdate the oil and gas lease applications; the first-qualified oil and gas lease applicant has no right or interest in the land applied for which is protected by the savings clauses of the Alaska Statehood Act and the Alaska Native Claims Settlement Act.

Haruyuki Yamane et al., 19 IBLA 320 (Apr. 7, 1975)

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first-qualified applicant in the event the Department decides to issue a lease.

Richard W. Bowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Connie Moll, 22 IBLA 307 (Nov. 10, 1975)

Where an offeror failed to take an appeal from a decision issuing a noncompetitive oil and gas lease but erroneously rejecting certain available lands while correctly rejecting other lands in the offer and the offeror failed to retender rental for the erroneously rejected lands, and where the error could be readily apparent to the offeror, and the offeror acquiesced for a year and a half in the lease as issued, such failure precludes the amendment of the lease and the offeror is deemed to have abandoned his preference right as the first-qualified applicant to lease the land which was erroneously rejected.

John Oakason, 23 IBLA 336 (Jan. 21, 1976)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

When the Secretary of the Interior determines that an oil and gas lease is to be issued for a particular tract, it must be issued to the first-qualified applicant. An applicant is not qualified because of his failure to comply with 43 CFR 3112.2-1(a) when he fails to provide the name of the State in which the parcel of land is located.

Ishmael Guerra, 26 IBLA 116 (July 26, 1976)

An oil and gas lease offer filed on behalf of a corporation may incorporate evidence of qualifications by reference to the serial number of a case record in which such evidence has already been filed with the Bureau of Land Management (BLM). However, reference to a file which contains no evidence of the authority of the officer signing the lease offer to execute such instruments on behalf of the corporation is not sufficient and requires rejection of the offer. The fact that the required evidence is on file in another State office of the BLM under another serial number will not avail applicant where the lease offer contains no reference to that file.

An oil and gas lease offer filed by a corporation under the simultaneous filing procedures, 43 CFR Subpart 3112, which is defective for failure to provide evidence of corporate qualifications may not be cured by subsequent filing of supplemental evidence after the drawing is held and must be rejected.

Churchill Corp., 27 IBLA 234 (Oct. 12, 1976)

Where a rubber stamp constitutes an offeror's signature on a simultaneous oil and gas lease entry card, the Bureau of Land Management need not presume that the offeror rather than an agent stamped the card, and where no agent's statement has been submitted, BLM may take appropriate action to establish the circumstances under which the signature was stamped on the card.

Evelyn Chambers, 27 IBLA 317 (Nov. 4, 1976) 83 I.D. 533

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

L. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

Improper issuance of a noncompetitive oil and gas lease in response to a defective drawing entry card in the simultaneous filing procedure does not foreclose the right of the second drawn applicant whose drawing entry card was complete when filed to a lease for the parcel named; the erroneously issued lease must be canceled,

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

and upon cancellation, the second drawee must be awarded a lease to the parcel, all else being regular.

Gerald L. Christensen, Edward C. Green, 30 IBLA 303 (June 6, 1977)

Where an oil and gas lease offer is signed by an agent on behalf of the offeror, the regulations with respect to qualifications of lessees require evidence of the authority of the agent and separate statements by the offeror and the agent regarding the nature and extent of any interest the agent has in the lease. The same requirement applies where the offeror's facsimile signature is affixed on the offer by an agent. An offer must be rejected where this information is not filed.

The Bureau of Land Management (BLM) has a responsibility to issue noncompetitive oil and gas leases only to the first-qualified offeror. A rubber-stamped or other form of facsimile signature, unlike a handwritten signature, does not give rise to a presumption that it was personally executed by the offeror. The BLM may inquire of the circumstances under which the signature was stamped on the offer to determine whether compliance with 43 CFR 3102.6-1 was required.

Charlotte L. Thornton, William M. Weaver, Jr., Robert L. Smith, 31 IBLA 3 (June 15, 1977)

An over-the-counter oil and gas lease offer, properly rejected because it failed to meet the requirements of the regulations, may be considered as having priority as of the date the defect is cured where the curative action was taken during an appeal from the rejection of the offer.

Emerald Oil Co., 31 IBLA 119 (June 24, 1977)

Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a rubber-stamped or other facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1 apply, and separate statements of interest by both offeror and the agent must be filed, or the offer will be rejected.

Ray H. Thames, 31 IBLA 167 (July 5, 1977)

A first-drawn simultaneous drawing entry card which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

Norcross Partners, 31 IBLA 181 (July 5, 1977)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

Lola I. Doe, 31 IBLA 394 (Aug. 19, 1977)
Continued--

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Sidney H. Schreter, William F. Hogg, Jr., 32 IBLA 146 (Sept. 12, 1977)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

John P. Frreko, Jr., 32 IBLA 191 (Sept. 15, 1977)

If a noncompetitive oil and gas lease is issued for a particular parcel of land, it must be issued to the first-qualified applicant. Under the simultaneous drawing procedures, a defective entry card must be rejected.

Walter H. Sorensen, 32 IBLA 345 (Oct. 21, 1977)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined by this Department to create an interest in the lease for the service, and the service files a waiver of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the waiver is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Alfred L. Easterday, 34 IBLA 195 (Mar. 22, 1978)

A lease erroneously issued in violation of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property must be canceled if a lease is awarded to another applicant in a drawing held among the first and other offers simultaneously filed following repeal of the regulations.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease erroneously canceled, because under 43 CFR 3112.1-1 land in canceled leases is subject to the filing of new noncompetitive lease offers only in accordance with simultaneous filing procedures.

An over-the-counter oil and gas lease offer filed for land formerly embraced in an oil and gas lease which has expired by operation of law, which land has not been placed on the list of lands available for the

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112, must be rejected.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification may not be avoided by allegations that delivery was delayed by the postal service, as the rule is that the postal authorities are the agents of the sender in such cases.

Where BLM records show that the first-drawn applicant for an oil and gas lease paid his rental 1 day late, and is therefore disqualified, there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Where a first-drawn oil and gas applicant offers evidence to show that his first year's advance rental was mailed sufficiently in advance so that, even if delayed, it would have arrived within the prescribed time, a legal presumption is raised that the payment was timely delivered.

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches *eo instante*.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by corporate qualification papers nor by any reference to a serial number where such information is to be found, as required by 43 CFR 3102.4-1.

Where a simultaneous drawing entry card culminates in lease issuance and it is subsequently ascertained that the serial number represented by the offeror to contain the corporate qualification papers, relates to "Christiansen Oil and Gas, Inc.," rather than to the offeror-lessee, Christiansen Oil, Inc., the lease is properly canceled, since the offeror was not the first-qualified offeror.

Christiansen Oil, Inc., 37 IBLA 52 (Sept. 18, 1978)

A first-drawn simultaneous oil and gas lease offer filed by an association which is not accompanied by evidence of the qualifications of the association to hold an oil and gas lease or which does not refer to the case record in which the evidence had previously been filed, as required by 43 CFR 3102.3-1(a), must be rejected.

SID Partnership, 37 IBLA 165 (Oct. 10, 1978)

An application for an oil and gas lease filed in the name of a person deceased at the time of filing is properly rejected as there then was no offeror qualified to hold a lease.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. A first-drawn drawing entry card oil and gas lease offer signed by an agent but which is not accompanied by the statements required by regulation must be rejected because the offeror is not the first-qualified applicant.

Cotton Petroleum Corp., 38 IBLA 271 (Dec. 13, 1978)

The first-drawn entry card of a corporation which has failed to comply with the regulations governing qualifications must be rejected.

Appellant's request that it be permitted to furnish the evidence of qualifications on appeal is denied. In simultaneous oil and gas leasing, the only difference between the drawing entry cards is the order in which they are drawn. The applications are considered to have been simultaneously made. Giving an unqualified first-drawn entrant additional time to file infringes on the rights of the second-drawn qualified offeror.

University of the Trees, 40 IBLA 74 (Mar. 16, 1979)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information.

Charles J. King, 40 IBLA 276 (Apr. 18, 1979)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification, stemming from failure to pay timely, will not be avoided by allegations that payment was mailed far enough in advance to arrive at BLM timely.

American Petrofina Co. of Texas, 41 IBLA 126 (June 13, 1979)

A first-drawn entry card creates no vested right therein; the offeror gains merely a right of priority in consideration. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all mandatory regulations.

Harry A. Zuckerman et al., 41 IBLA 372 (July 23, 1979)

An oil and gas lease may be awarded to the first-qualified applicant only. The regulations governing qualifications are mandatory, and strict compliance therewith is required.

A defective drawing card offer for an oil and gas lease is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second- and third-drawn qualified offerors have intervened. Where appellant's offer was third drawn and eventually accorded priority and then ultimately disqualified, the parcel described therein must be included in a subsequent list of lands available for simultaneous filing.

Don C. Bell II (Trustee), 42 IBLA 21 (July 25, 1979)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where an applicant with first priority dies after filing an oil and gas lease application but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed in all cases an offer to lease in compliance with 43 CFR 3102.8. Such offer will be effective as of the date of the original lease offer filed by the deceased.

Lamar M. Richardson, Jr., 42 IBLA 333 (Aug. 30, 1979)

Where a protest, with accompanying supporting evidence, alleges that the oil and gas lease offer drawn first in a simultaneous filing-drawing procedure violated the regulations because a party in interest was not disclosed and there was a multiple filing, the Bureau of Land Management should first afford the drawee an opportunity to respond to the protest before rejecting the offer based on facts alleged in the protest. The error, however, is rendered harmless where on appeal the offeror has full opportunity to make factual submissions and respond to the allegations.

H. J. Enevoldsen, 44 IBLA 70 (Nov. 20, 1979)
86 I.D. 643

Where an applicant with first priority dies after filing an oil and gas lease application but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

Estate of F. J. Bradshaw, 44 IBLA 107 (Nov. 20, 1979)

FUTURE AND FRACTIONAL INTEREST LEASES

In a noncompetitive oil and gas lease offer for acquired lands in which the United States owns a fractional present interest, 43 CFR 3130.4-4 requires offeror to submit a statement detailing the extent of his ownership in operating rights not owned by United States, regardless of whether the United States owns 50 percent or more of operating rights.

Where an unamended senior offer for a noncompetitive fractional oil and gas lease on acquired lands is not in compliance with 43 CFR 3130.4-4, a junior offer obtains priority to extent of conflicts between competing filings, and the junior offeror's protest must be sustained.

Frederick L. Smith et al., 19 IBLA 162 (Mar. 14, 1975)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, successfully drawn at a noncompetitive lease simultaneous drawing, is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

George H. Isbell, Jr., 20 IBLA 312 (May 30, 1975)

James E. Belden, Henry Y. Yoshino, 23 IBLA 216 (Jan. 6, 1976)

Thelma Wright, Geral Beveridge, 27 IBLA 198 (Oct. 4, 1976)

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

The failure of the offeror for a noncompetitive oil and gas lease to complete that part of item 2 of the lease offer form calling for the extent of the interest of the United States in oil and gas if less than 100 percent does not by itself necessitate rejection of the offer as the offer is held to include "any and all" lands described therein and whatever mineral interest the United States owns in said lands and thus becomes an offer for whatever interest is available.

An acquired lands lease offer for land in which the United States owns only a fractional mineral interest is defective and subject to rejection when the applicant fails to accompany his offer with the statement required by the regulations showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror subsequently submits his statement regarding ownership of operating rights prior to a final decision rejecting the offer, the defect may be considered cured with priority of filing as of the time the statement was filed.

John Oakason, Jean Oakason, 21 IBLA 185 (July 25, 1975)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany the offer with the statement required by the regulation showing the extent of ownership of operating rights to the fractional mineral interest not owned by the United States.

Margaret Hughes Boggs, 22 IBLA 146 (Sept. 30, 1975)

Michael Shearn, 24 IBLA 259 (Mar. 29, 1976)

Robert L. Williams, 24 IBLA 311 (Apr. 20, 1976)

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

Beatrice E. Marchand, 26 IBLA 180 (Aug. 9, 1976)

In accordance with the policy established by 43 CFR 3130.4-4, the Department ordinarily issues oil and gas leases only to offerors who, upon issuance of the lease, will own at least 50 percent of the operating rights of a lease.

L. F. Lindsay, Sr., et al., 23 IBLA 218 (Jan. 6, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by 43 CFR 3130.4-4 showing the extent of his ownership of operating rights for the fractional mineral interest not owned by the United States.

June Brooks, 25 IBLA 326 (June 30, 1976)

A simultaneous acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interests not owned by the United States, nor can such defect be cured by submitting the information on appeal.

Jelenko Stefanovic, 26 IBLA 229 (Aug. 17, 1976)

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

An oil and gas lease offer for land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Grady Argenbright, 27 IBLA 24 (Sept. 17, 1976)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, is defective and is properly rejected when the applicant fails to accompany its offer with the statement required by the regulation showing the extent of its ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror submits its statement of operating rights with its appeal, the defect may be considered cured with priority of filing as of that time.

Arkansas Western Gas Co., 27 IBLA 207 (Oct. 6, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

An oil and gas lease offer for lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. If an agent signs such statement, rather than the offeror, the regulations require that evidence be filed of the authority of the agent to sign the statement. The agent's signature will be acceptable only if the authorization meets the specifications of the regulations.

An oil and gas lease offer for lands in which the United States owns a fractional mineral interest which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is defective and such defect cannot be cured by the submission of further information.

Frank G. Wells, 28 IBLA 113 (Nov. 15, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Susan B. Smith, 28 IBLA 173 (Nov. 24, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Duncan Miller, 29 IBLA 1 (Feb. 7, 1977)

Mary Nan Spear, 31 IBLA 386 (Aug. 16, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. When an offeror submits, on appeal, a copy of such statement but the date on the statement differs from the date on the card, and the offeror does not allege he filed the statement simultaneously with the offer, such offer must be rejected for failure to comply with a mandatory regulation.

Duncan Miller, 29 IBLA 43 (Feb. 16, 1977)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Oct. 28, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Vernon C. Howell, 30 IBLA 70 (Apr. 18, 1977)

Where the regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States, a simultaneously filed lease offer which is not accompanied by the required statement must be rejected, and the defect may not be "cured" by submission of the statement at a later time.

David F. Owen, 31 IBLA 24 (June 20, 1977)

Where the United States owns only fractional mineral interest in the land, an offer filed before Sept. 30, 1976, for a simultaneous oil and gas lease drawing, must be rejected where it is not accompanied by a statement showing extent of offeror's ownership of operating rights in fractional mineral interest not owned by the United States.

Bruce T. Cameron, Carol Heller, 31 IBLA 234 (July 12, 1977)

Where the regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for acquired land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States, a simultaneously filed oil and gas lease offer which is not accompanied by the required statement must be rejected.

Where a regulation requires that an acquired lands oil and gas lease offer be accompanied by a separate statement as to the offeror's ownership of operating rights to the fractional mineral interest not owned by the

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

United States, and the offer is rejected for noncompliance therewith, the offeror's bald assertion that he filed such statement is insufficient to prove such a fact without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

M. J. Langley, 32 IBLA 118 (Sept. 12, 1977)

Regulations in force prior to Oct. 28, 1976, prohibited, in the absence of extraordinary circumstances, the issuance of oil and gas leases for fractional interests to one who would own less than 50 percent of operating rights in the leased property. The later determination that such a policy may not in general serve the public interest and the expression of the new policy in a revised regulation does not constitute an extraordinary circumstance.

Repeal of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property gives priority to an otherwise regular offer which would have had to be rejected under the former regulations, as of the effective date of the repeal, provided that no offers qualified under the former regulation have been received prior to repeal, and that the offer has not been rejected prior to repeal.

A lease erroneously issued in violation of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property must be canceled if a lease is awarded to another applicant in a drawing held among the first and other offers simultaneously filed following repeal of the regulations.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

Where BLM rejected appellant's offer for oil and gas lease because it failed to receive from him fractional interest statement required by 43 CFR 3130.4-4 (1975), and evidence affidavits by appellant and his wife were filed on appeal reciting that he mailed such statement with his entry card for simultaneous drawing, the presumption of administrative regularity obtains and appellant must be deemed to have not borne his risk of nonpersuasion.

Charles J. Babington, 36 IBLA 107 (July 14, 1978)

KNOWN GEOLOGIC STRUCTURE

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1), and to furnish a lease bond as required by 43 CFR 3104.1.

Duncan Miller, 19 IBLA 86 (Mar. 3, 1975)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

The effective date of a determination that lands are within a known geologic structure of a producing oil and gas field, within the meaning of 30 U.S.C. § 226(b) (1970) and 43 CFR 3100.7-3, is the date of the ascertainment of the facts supporting the determination. After that date the Bureau of Land Management has no authority to issue an oil and gas lease pursuant to the noncompetitive lease provisions of the Mineral Leasing Act of 1920, 30 U.S.C. § 226(c) (1970).

The assertion that the Geological Survey has followed a different practice in classifying lands as within a known geologic structure on other lands is relevant insofar as it may show that the lands at issue were erroneously classified as presumptively productive, but a showing of the difference in practice would not by itself prove error.

A party challenging a determination that lands are within a known geologic structure has the burden of making a clear and definite showing of error in the determination; material indicating that the geologic formation at issue is irregular in quality and productivity does not constitute a showing that the lands are not presumptively productive, *i.e.*, that the lands are not within the known or inferred limits of the multiple and overlapping producing intervals involved.

When an appellant asserts facts which do not on their face sustain the contentions on appeal, this Board will deny a request for a hearing to determine the asserted issues of fact. 43 CFR 4.415.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 129 (Mar. 5, 1975)

A bond for not less than $1,000 is properly required to be filed when all or any part of the land in a noncompetitive lease is included within the limits of a known geologic structure of a producing oil and gas field. That the land is included in a communitized producing unit does not vitiate that requirement.

Duncan Miller, 20 IBLA 9 (Apr. 14, 1975)

It is the date of the ascertainment by the Geological Survey of the producing character of a structure underlying a tract of land and not the date of the pronouncement of said fact which is determinative of rights depending on whether or not the land is situated within a known geological structure (KGS). A noncompetitive oil and gas lease offer must be rejected if, at any time before a lease actually issues, the land described therein becomes within a KGS, even if the offer was filed prior to the ascertainment of the KGS.

A noncompetitive oil and gas lease must be canceled where the land described therein is determined by the United States Geological Survey to be within a known geological structure of a producing oil or gas field as of the date of the signing of the lease on behalf of the United States by the authorized officer.

One who attacks a determination by the Geological Survey that lands are situated within the known geological structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error.

An addition may be made to an existing known geological structure on the basis of drill stem test information which gives rise to the reasonable inference that a producing reservoir extends under the land included in the addition. It is not necessary that the well from which the information is derived be completed to a producing status before such conclusion is reached where the test information discloses the presence of two

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

reservoirs which are present and productive in the adjoining producing field.

William T. Alexander, 21 IBLA 56 (June 18, 1975)

Lands within a known geologic structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected.

One who attacks a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error.

James A. Wallender, 26 IBLA 317 (Aug. 30, 1976)

The signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease and creates a binding contract; such a lease contract is not subject to cancellation by reason of inclusion of leased land in a known geologic structure as of a date subsequent to lease issuance.

Barbara C. Lisco, 26 IBLA 340 (Sept. 7, 1976)

Where part of the lands in an oil and gas lease are included within the known geologic structure of a producing oil or gas field, the annual rental rate will be increased for all of the land in the lease and a bond required.

H. B. Cahoon Investment Co., John Oakason, 27 IBLA 210 (Oct. 6, 1976)

When a noncompetitive oil and gas lease has been issued and includes land within a known geologic structure which was ascertained prior to the issuance of the lease, the lease was erroneously issued and must be canceled to the extent that it included land within the KGS.

In the absence of an express revocation, the determination of an unnamed, undefined known geologic structure is not canceled when the structure is omitted from a redefinition of a neighboring but separate field, nor is such a determination canceled by an erroneous certification on a lease that the lands therein are not within a KGS.

David A. Provinse, 27 IBLA 376 (Nov. 5, 1976)

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a Secretarial Order provides that all oil and gas noncompetitive offers must, prior to issuance of a lease, be referred to Geological Survey for a determination of whether the lands are within a known geological structure, and the authorized officer fails to follow such procedure prior to the signing, such signing is not authorized and, therefore, not binding on the Secretary.

Nola Grace Ptasynski (Supp.) (On Court Remand), 28 IBLA 256 (Dec. 20, 1976)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

Where the record does not disclose sufficient facts upon which to make determinations whether a Bureau of Land Management officer who signed an oil and gas lease possessed the authority to do so, when the date of ascertainment of a known geologic structure actually occurred, and whether the United States Geological Survey had sufficient information to make a known geologic structure determination, a hearing may be ordered so that a complete record may be developed.

William T. Alexander, 28 IBLA 277 (Dec. 22, 1976)

Except for establishing priority of filing, the drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror. If subsequent to the filing of a noncompetitive oil and gas lease offer and prior to issuance of a lease the land described therein is determined to be in a known geological structure of a producing oil or gas field, the noncompetitive lease offer must be rejected.

Guy W. Franson, 30 IBLA 123 (May 12, 1977)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error.

Curtis Wheeler, 31 IBLA 221 (July 7, 1977)

Lands within a known geological structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected.

Curtis D. Wheeler, 31 IBLA 354 (July 25, 1977)

Where a Bureau of Land Management decision rejects in part a simultaneous oil and gas lease offer because certain lands encompassed by the offer are within a known geologic structure, but appellant submits a Geological Survey letter which appellant states admits that such determination was based on erroneous information, the Bureau decision will be set aside and the case remanded for further appropriate consideration.

William E. Frazier, Jr., 32 IBLA 320 (Oct. 3, 1977)

Land included within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding.

A noncompetitive oil and gas lease must be canceled where the land described therein was determined by the United States Geological Survey to be within a known geologic structure of a producing oil or gas field

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

prior to the date of signing the lease on behalf of the United States by the authorized officer.

Amerada Hess Corp., 33 IBLA 293 (Jan. 10, 1978)

A timely appeal from rejection of an oil and gas lease offer because of a determination of known geologic structure suspends the rejection pending decision by this Board, and where the Geological Survey rescinds the KGS determination as having been erroneously made during the pendency of the appeal, the status quo ante of land involved is restored.

Where land was omitted from an oil and gas lease only because of an erroneous KGS determination, and the applicant has preserved his priority by timely appealing the rejection, it is proper to amend such lease to include such omitted land when the Geological Survey rescinds its erroneous KGS determination.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

Where an offeror submits a bid in a competitive sale, under the law and regulations governing such sales, he accepts the premise that the land is within the known geologic structure of a producing field.

Gerald S. Ostrowski, 34 IBLA 258 (Mar. 28, 1978)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

"Known geologic structure." A known geologic structure is technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive.

When on appeal a sufficient showing is made to call into question a determination that land lies within a known geologic structure of a producing oil or gas field, and a hearing is requested, the decision may be set aside and remanded for hearing.

Jack J. Bender, 40 IBLA 26 (Mar. 9, 1979)

The failure of the BLM officer to follow the procedure set out in a Secretarial Order requiring all offers, prior to issuance of a lease, to be sent to Geological Survey for a determination of whether the lands are within a known geologic structure, renders the signing of the lease unauthorized, and thus not binding on the Secretary.

Generally, the signing of an oil and gas lease by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease. When land is determined to be within a known geologic structure prior to authorized issuance of a lease, noncompetitive lease offers must be rejected and the land may be leased only by competitive bidding.

One who challenges the classification of lands as within a known geologic structure has the burden of showing

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

that the determination is in error, and the classification will not be disturbed in the absence of a clear and definite showing of error.

United States v. William T. Alexander (On Court Remand), 41 IBLA 1 (May 21, 1979)

Where a noncompetitive oil and gas lease is rejected on the ground that the land lies within an undefined known geologic structure, but the Geological Survey indicates its willingness to amend such classification based on verification of information to be supplied by the offeror, the case will be remanded for further consideration.

Jean Szczepanski, 44 IBLA 206 (Dec. 11, 1979)

LANDS SUBJECT TO

Where an oil and gas lease offer for public lands within 1 mile of the exterior boundaries of a naval petroleum reserve is rejected because the Department of the Navy recommends against the leasing of the land despite the Geological Survey's determination that operations on the subject land would not adversely affect the naval reserve through drainage from known productive horizons, the decision rejecting the lease offer will be reversed. The recommendations of the Federal agency exercising jurisdiction over a naval petroleum reserve, while important, are not conclusive. The final determination rests with the Department, and where the Geological Survey after full consideration of pertinent technical considerations recommends leasing, a lease will issue.

R. Garvin Berry, Jr., 18 IBLA 331 (Jan. 9, 1975)

Land formerly included in a canceled or relinquished lease or in a lease terminated or expired by operation of law shall be subject to filing of new lease offers only as provided in 43 CFR 3112.

Duncan Miller, 19 IBLA 188 (Mar. 18, 1975)

Oil and gas lease offers embracing lands within an area under consideration as a potential wild and scenic river area pursuant to sec. 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1276(d) (1970), or within adjacent areas having special resource values which might be damaged by oil and gas leasing may be properly rejected in the exercise of the Secretary's discretion in leasing.

John Oakason, Beard Oil Co., 19 IBLA 191 (Mar. 18, 1975)

Rosita Trujillo, 21 IBLA 289 (Aug. 11, 1975)

An oil and gas lease offer must be rejected when, before the lease offer has been accepted, the land applied for has been patented with no reservation of oil and gas to the United States.

It is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application.

Lloyd W. Levi, 19 IBLA 201 (Mar. 19, 1975)

Yolana Bochar et al., 19 IBLA 204 (Mar. 19, 1975)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Under the policy of the Secretary of the Interior of maintaining on file oil and gas lease offers for lands in Alaska filed prior to the issuance of Public Land Order 4582 on Jan. 17, 1969, an offer which would ultimately require rejection because of the unavailability of the land at the time the offer was filed, will not be retained on file, but may be properly rejected at any time when the case is reached for adjudication.

An oil and gas offer, for lands in a terminated or relinquished lease, must be filed in compliance with the simultaneous filing procedure in 43 CFR 3112. If such an offer is not so filed, it is properly rejected.

Vance W. Phillips and Aelisa A. Burnham, 19 IBLA 211 (Mar. 21, 1975)

The Mineral Leasing Act of 1920 is not applicable to lands of the Wind River Indian Reservation which were ceded by the Indians to the United States in trust for disposition but were subsequently restored to tribal ownership. Such lands may be leased only under the Act of May 11, 1938, 25 U.S.C. § 396a *et seq*. (1970).

The Mineral Leasing Act of 1920 is not applicable to the ceded but undisposed of lands of the Wind River Indian Reservation. Such lands may be leased only under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Co., 19 IBLA 205 (Mar. 28, 1975)

Oil and gas lease applications, action on which was suspended under Public Land Order 4582, 34 FR 1025 (1969), are properly rejected when the lands are subsequently patented to the State of Alaska under selection applications even though the latter postdate the oil and gas lease applications; the first-qualified oil and gas lease applicant has no right or interest in the land applied for which is protected by the savings clauses of the Alaska Statehood Act and the Alaska Native Claims Settlement Act.

Haruyuki Yamane et al., 19 IBLA 320 (Apr. 7, 1975)

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer was formerly included in a terminated oil and gas lease, and which may be leased only in compliance with the simultaneous filing procedures set out in 43 CFR 3112.

Duncan Miller, 20 IBLA 19 (Apr. 16, 1975)

An offer for an oil and gas lease under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

Shell Oil Co., 20 IBLA 292 (May 27, 1975)

Oil and gas lease offers embracing lands withdrawn or reserved for any agency of the Department of Defense may not be granted without the consent of that Department. 43 U.S.C. § 158 (1970). Such lease offers must be rejected where such consent is withheld as inconsistent with the military use, and the offers may not be suspended to await the possible availability of the lands for leasing.

Mobil Oil Corp., 20 IBLA 296 (May 27, 1975)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

"Waterfowl production areas" are within the meaning of "wildlife refuge lands" in 43 CFR 3101.3-3(a) and, therefore, are subject to the prohibition against oil and gas leasing (except where drainage is involved) contained in 43 CFR 3101.3-3(a)(1).

L. B. Young, Jr., 20 IBLA 333 (June 11, 1975)

An oil and gas lease application covering lands in an outstanding lease, whether that lease is valid, void or voidable, must be rejected. A noncompetitive oil and gas lease offer covering lands in a known geologic structure must be rejected, such lands being subject to lease only by competitive bidding.

Duncan Miller, 21 IBLA 21 (June 16, 1975)

The prohibition in 43 CFR 3101.3-3(a)(1) against leasing for oil and gas in wildlife refuge lands, except where there is drainage, applies to areas withdrawn for waterfowl production, even though the withdrawal order did not prohibit leasing. Offers for such lands and lakebeds riparian thereto are properly rejected.

A. G. Golden, 21 IBLA 76 (June 25, 1975)

Where a Federal oil and gas lease has issued covering land which has been patented with no mineral reservation to the United States in the patent, the oil and gas lease is properly canceled as to such land.

O. D. Presley, 21 IBLA 190 (July 28, 1975)

It is proper to reject an oil and gas lease offer to the extent of conflict with an Alaska State selection application after the application has been tentatively approved even though the offer was filed before the selection application.

C. Burglin et al., 21 IBLA 234 (Aug. 11, 1975)

When several offers for a noncompetitive oil and gas lease are filed for the same parcel during a simultaneous filing period and all are withdrawn after the drawing but before a lease is issued, the land is not thereby made available for an over-the-counter offer but must be included in a subsequent list of lands available for filing under the simultaneous drawing procedure.

Edward M. Digneo, 22 IBLA 4 (Sept. 4, 1975)

Land included in an oil and gas lease which terminates by operation of law for failure to pay rental timely, is subject to filing of new oil and gas lease offers only in accordance with the provisions of the regulations relating to simultaneous filing of oil and gas lease offers, and the filing of an over-the-counter lease offer will not interdict the simultaneous filing procedure as to that land.

Vern H. Bolinder, 22 IBLA 130 (Sept. 26, 1975)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Land included within an outstanding oil and gas lease is not available for leasing and an application filed for such land must be rejected.

Land, formerly in a canceled, relinquished, terminated, or expired lease, is not subject to over-the-counter filing, and may be leased only in compliance with the drawing procedure established by 43 CFR 3112.

John F. Brown, 22 IBLA 133 (Sept. 26, 1975)

Where the reasons given for rejection of an oil and gas lease offer are that several archaeological sites, possibly other such archaeological sites, and scenic values of certain lands might be endangered by oil and gas development, but the field report relied upon does not delineate the archaeological sites and fails to describe the scenic values that would be affected, the decision may be set aside and the case remanded for further investigation to determine if oil and gas leasing could be allowed with protective stipulations, or, if not, to substantiate the basis for rejection.

Phillip S. Mahoney, 22 IBLA 136 (Sept. 26, 1975)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Paradox Oil and Gas Co., 22 IBLA 242 Oct. 22, 1975)

National forest public lands which have not been withdrawn from oil and gas leasing but are under study by the Forest Service as a proposed wilderness area are available for leasing in the discretion of, and under conditions imposed by, the Secretary of the Interior. Such discretion is not properly exercised when the Bureau of Land Management rejects an offer solely upon the recommendation of the Forest Service that land is a "candidate" for a proposed wilderness area without making an independent determination that leasing, with appropriate protective stipulations, is or is not in the public interest.

Esdras K. Hartley, 23 IBLA 102 (Dec. 23, 1975)

When an agency with jurisdiction over acquired lands has requested a short-term suspension of oil and gas lease offers, a decision rejecting the offers may be remanded to consider processing the offers in a manner consistent with that of a similar offer for which the agency has also accepted a suspension.

Chevron Oil Co., 23 IBLA 163 (Dec. 23, 1975)

A noncompetitive oil and gas lease offer for acquired land in an incorporated city, is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes such lands from its provisions.

Sallie B. Sanford, 23 IBLA 312 (Jan. 16, 1976)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Public lands in national forests are presently open to oil and gas leasing regardless of whether they are part of an officially designated wilderness area. However, where the land is within such an established wilderness area, the Secretary of Agriculture has the statutory authority to prescribe reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for the purpose of the lease, although only the Secretary of the Interior may close the land to leasing or prohibit the issuance of a lease.

Stanley M. Edwards, 24 IBLA 12 (Feb. 4, 1976)
83 I.D. 33

National forest lands, some of which are in a wilderness area, a roadless area, or a memorial parkway, which have not been withdrawn from oil and gas leasing, are subject to leasing in the discretion of and under conditions imposed by the Secretary of the Interior. However, where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his plenary discretion to refuse to issue leases, and subsequent offers for lands in this designated area restricted from leasing are properly rejected.

James Donoghue et al., 24 IBLA 210 (Mar. 23, 1976)

The amount of acreage contained in an oil and gas lease may be reduced where, upon resurvey of the land, it is determined that the area under lease is actually smaller than the area shown by the original survey.

Grace M. Brown et al., 24 IBLA 301 (Apr. 1, 1976)

Because the Mineral Leasing Act for Acquired Lands specifically excludes the leasing of land located within an incorporated city, town, or village, a noncompetitive oil and gas lease offer for acquired land within the boundaries of such a city, town, or village is properly rejected.

In the absence of specific statutory authority to lease, the Secretary of the Interior has implied authority, as guardian of the public's natural resources, to lease an oil and gas deposit under his jurisdiction when it is in danger of being drained by wells drilled on adjacent land. However, such protective leases may be issued only by competitive bidding.

James L. Santy, 25 IBLA 390 (July 6, 1976)

Where an oil and gas lease offer is rejected because the land was received by the United States as part of a sec. 8, Taylor Grazing Act exchange, and the record does not indicate such an exchange took place the case will be remanded for consideration in light of the actual record.

Husky Oil Co. of Delaware, 26 IBLA 194 (Aug. 11, 1976)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas lease offer filed for such land must be rejected.

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

The Secretary has discretionary authority to reject an oil and gas lease offer where Federal title to the oil and gas deposits is uncertain.

Leonard E. McSweyn, David A. Provinse, 26 IBLA 376 (Sept. 9, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether the lease, with stipulations, should be issued. A case will be remanded for such a determination especially where the Forest Service on appeal has reconsidered and recommends leasing with certain stipulations.

Fred P. Blume, 28 IBLA 58 (Nov. 9, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether not to issue a lease or whether issuance of a lease subject to appropriate stipulations is in the public interest. A case will be remanded to the Bureau of Land Management for an independent determination where it is evident that such has not been done.

Kenneth F. Cummings and A. W. Fleming, Empire Resources, Inc., 28 IBLA 73 (Nov. 12, 1976)

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

Leonard E. McSweyn, 28 IBLA 100 (Nov. 15, 1976)
83 I.D. 556

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest.

The Secretary of the Interior may reject a noncompetitive offer to lease for oil and gas when he determines that it is in the public interest to do so because the lands applied for are within the Interstate 70 scenic corridor and are under consideration for inclusion in a primitive area.

Pinnacle Mining and Exploration Co., Inc., 28 IBLA 249 (Dec. 20, 1976)

An oil and gas lease offer made pursuant to the Mineral Leasing Act for Acquired Lands is properly rejected where the subject lands are not acquired lands but, rather, are patented with a reservation of mineral rights in the United States.

John O. Clay, 28 IBLA 353 (Jan. 24, 1977)

Where the Bureau of Land Management has determined that lands listed under the simultaneous oil and gas leasing system should not have been listed solely because the lands lie within "a critical watershed which is to be the subject of an Environmental Impact Statement," the first-drawn offer will not be rejected but may remain in suspended state until completion of the EIS and determination at that time whether the lands may be leased subject to stipulations for protection of the watershed.

Adrian Overton, 29 IBLA 66 (Feb. 18, 1977)

Lands withdrawn for the protection of Alaska Natives' selection rights are not available for oil and gas leasing under the Mineral Leasing Act. 43 U.S.C. § 1621(i) (Supp. III 1973).

James W. Cance et al., 1 SEC. 1 (Apr. 15, 1977)
84 I.D. 176

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to promulgate a Public Land Order closing an area of public lands to oil and gas leasing for the purpose of preserving and developing the potash deposits therein belonging to the United States, it is proper to reject oil and gas lease offers for such withdrawn lands.

AA Minerals Corp., 30 IBLA 259 (May 31, 1977)

An oil and gas lease offer must be rejected as to lands applied for which are held in trust for Indians and are not available under the Mineral Leasing Act. Even though the minerals in these lands have been reserved to the United States, mineral development is not possible at this time because the language of the exchange act under which the lands were acquired requires further promulgation of special regulations by the Secretary as a condition precedent to such development.

Thomas D. Chace, 31 IBLA 13 (June 17, 1977)

43 CFR Subpart 3112 renders invalid an over-the-counter oil and gas lease offer filed for lands in canceled or relinquished leases or leases which have terminated by operation of law, for such lands are subject to simultaneous offers only.

Robert S. Bickel, 31 IBLA 201 (July 6, 1977)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas lease offer filed for such land must be rejected.

Curtis D. Wheeler, 31 IBLA 354 (July 25, 1977)

Alvel C. Duncan, 39 IBLA 144 (Jan. 29, 1979)

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not been posted as available as prescribed by 43 CFR subpart 3112.

A junior oil and gas lease offer is properly rejected when the senior offer subsequently is accepted and the lease is properly issued.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Where the Bureau of Land Management rejects in part an oil and gas lease offer because the subject lands are within a coal permit, and where a general policy determination as to the compatibility of concurrent development of these minerals is pending, the case will be remanded to be suspended and subsequently acted upon in light of whatever general policy is formulated.

Thomas F. Manners, 33 IBLA 362 (Jan. 23, 1978)

Lands acquired for military purposes and subsequently disposed of as surplus property under the Federal Property and Administrative Services Act with a reservation of mineral rights to the United States are not subject to leasing under the Mineral Leasing Act for Acquired Lands. Oil and gas leases on such land may issue only under the provisions of the Federal Property and Administrative Services Act, which requires competitive bidding.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

Oil and gas lease offers may be rejected where legal title to the lands in issue is uncertain. It is not improper for BLM to refuse to suspend the offers pending determination of the title issue.

E L Industries, Inc., 34 IBLA 99 (Feb. 23, 1978)

Regulations in force prior to Oct. 28, 1976, prohibited, in the absence of extraordinary circumstances, the issuance of oil and gas leases for fractional interests to one who would own less than 50 percent of operating rights in the leased property. The later determination that such a policy may not in general serve the public interest and the expression of the new policy in a revised regulation does not constitute an extraordinary circumstance.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

An oil and gas lease offer for lands in a reservoir right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1970), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

Republic Oil & Mining Co. and *Margaret V. Coombs*, 35 IBLA 212 (May 26, 1978)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease erroneously canceled, because under 43 CFR 3112.1-1 land in canceled leases is subject to the filing of new noncompetitive lease offers only in accordance with simultaneous filing procedures.

An over-the-counter oil and gas lease offer filed for land formerly embraced in an oil and gas lease which has expired by operation of law, which land has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112, must be rejected.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Unsurveyed fast lands, formed by accretion to public land or to lands patented with an oil and gas reservation, riparian to a navigable river and lying within the meander lines of that navigable river, as recorded on the official plat, may be leased provided that a proper offer is received and the other relevant conditions precedent to leasing are met.

Federal law determines the legal characterization of accretions, avulsions, and relictions to land riparian to navigable bodies of water, where title to the land or reserved interests in the land remains in the United States.

The boundary of an oil and gas lease covering lands riparian to a navigable river is the meander line indicated on the official plat of survey and not the waterline. Thus, lands accreted to the leased lands may be separately leased.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer is in an expired or terminated lease and has not been posted as available, as prescribed by 43 CFR Subpart 3112.

Robert P. Marshall, 36 IBLA 279 (Aug. 21, 1978)

Robert W. Enfield, 36 IBLA 303 (Aug. 31, 1978)

Oil and gas under a reservoir right-of-way may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.* (1970), but may only be leased to the holder of the right-of-way, his assignee, or to adjacent owners or their lessees in accordance with the Act of May 21, 1930, 30 U.S.C. § 301 (1970); therefore, offers filed under the Mineral Leasing Act for such lands are properly rejected.

Alice Hays, 36 IBLA 313 (Aug. 23, 1978)

Where land was previously included in an oil and gas lease and thereafter listed for the simultaneous filing of offers pursuant to 43 CFR 3112, and two offers were filed, both of which were rejected, the land is not thereafter open to the filing of over-the-counter offers to lease, but must again be posted for simultaneous filing.

L. B. Walstrom, Jr., 36 IBLA 397 (Sept. 5, 1978)

Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act, *as amended*, 30 U.S.C. § 181 (1970). If drainage occurs on such lands by reason of wells drilled on adjacent lands, agreements with the owners thereof may be entered into by the Bureau of Land Management pursuant to 43 CFR 3100.3.

Hawthorn Oil Co., 37 IBLA 91 (Sept. 22, 1978)

Lands or minerals in lands were not "withdrawn" and "restored from a withdrawal" as those terms are used in the public land laws merely because an erroneous title opinion that the minerals are not owned by the United States is corrected to reflect that they are owned by the United States, and the oil and gas simultaneous filing procedures are applicable where those minerals

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

were in a lease which expired before the correction of the status of the minerals was made.

Regardless of whether lands have been withdrawn from leasing and later restored, or were not withdrawn, an over-the-counter oil and gas lease offer must be rejected where the land involved was formerly embraced in an oil and gas lease which has expired by operation of law and has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112.

David A. Provinse, 38 IBLA 347 (Dec. 22, 1978)

Erroneous issuance by BLM of oil and gas lease on other withdrawn land in area of tract for which appellant submitted lease offer does not effect restoration to leasing of latter withdrawn tract.

F. M. Tully, 39 IBLA 137 (Jan. 29, 1979)

"Lands not available for leasing." Under 43 CFR 3110.1-3(a), lands are deemed to be not available for leasing when they are surrounded by lands contained within patents with no oil and gas rights reserved to the United States, when they are segregated from oil and gas leasing by withdrawal, or are embraced within an outstanding lease with an effective issuance date prior to the filing date of the subject offer.

Helen E. Reid, 39 IBLA 378 (Feb. 28, 1979)

A noncompetitive oil and gas lease issued for lands which, at the time of the lease application, had been posted erroneously as available for leasing but were then included in a prior lease, will be allowed to continue in effect where the first lease expired before the second lease issued and no questions of public policy or third party rights are contravened by the lease issuance.

Reed Gilmore, 40 IBLA 139 (Mar. 29, 1979)

Oil and gas offers, filed for lands withdrawn by PLO No. 5418, must be rejected. The order was issued under the authority of the Pickett Act, 43 U.S.C. §§ 141-142 (1970), repealed by FLPMA, and the order was not arbitrary, capricious, or an abuse of discretion.

Bristol Bay Native Corp., 41 IBLA 85 (June 4, 1979)

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, and the regulations issued pursuant to that Act, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease. The Secretary, through BLM, his duly authorized representative, may reject any offer to lease public lands for oil and gas upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. When the land, situated in Hell's Half Acre, has geological, ecological, scenic, and recreational values and is under study for its wilderness potential, and where BLM recommends that the lands not be leased pending further studies of the area, rejection of the lease offer will be affirmed, in the absence of compelling countervailing reasons.

R. C. Hoefle, 41 IBLA 174 (June 22, 1979)

The Mineral Leasing Act for Acquired Lands does not exclude from oil and gas leasing those lands underlying the Missouri River within the boundaries of the Fort Berthold Indian Reservation as established by the Treaty of Fort Laramie (1851) and the Executive Order of Apr. 12, 1870, which were reacquired by the United States from the Indian tribes. The exclusion in the Act for submerged lands refers to submerged coastal lands, as set forth in 43 CFR 3101.2-1(g).

Tarel Energy Corp., 42 IBLA 105 (Aug. 16, 1979)

Land within the National Desert Wildlife Range is not subject to noncompetitive oil and gas leasing.

Kenneth F. Cummings, 43 IBLA 110 (Sept. 24, 1979)

It is within the discretion of the Bureau of Land Management to impose the requirement of a no surface occupancy stipulation upon an oil and gas lease, where there has been a determination that it is in the public interest to do so because the lands applied for have important archaeological values, are within the Interstate 70 scenic corridor, and are under consideration for inclusion in a primitive area.

James M. Chudnow, 43 IBLA 375 (Oct. 31, 1979)

Lands which were acquired for development of their uranium deposits are not subject to oil and gas leasing under the Mineral Leasing Act for Acquired Lands.

Esdras K. Hartley, 44 IBLA 66 (Nov. 20, 1979)

NONCOMPETITIVE LEASES

The effective date of a determination that lands are within a known geologic structure of a producing oil and gas field, within the meaning of 30 U.S.C. § 226(b) (1970) and 43 CFR 3100.7-3, is the date of the ascertainment of the facts supporting the determination. After that date the Bureau of Land Management has no authority to issue an oil and gas lease pursuant to the noncompetitive lease provisions of the Mineral Leasing Act of 1920, 30 U.S.C. § 226(c) (1970).

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (Mar. 5, 1975)

When noncompetitive oil and gas lease offers are rejected by the Secretary of the Interior in the exercise of his discretion, the offers will not be held in suspense pending a future determination that the lands described in the offers should be leased.

John Oakason, Beard Oil Co., 19 IBLA 191 (Mar. 18, 1975)

An oil and gas lease offer must be rejected when, before the lease offer has been accepted, the land applied for has been patented with no reservation of oil and gas to the United States.

It is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application.

Lloyd W. Levi, 19 IBLA 201 (Mar. 19, 1975)

Continued--

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Yolana Rockar et al., 19 IBLA 204 (Mar. 19, 1975)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he/she fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

Mar-Win Development Co., 20 IBLA 383 (June 12, 1975)

John Paul Pratt, 24 IBLA 110 (Mar. 1, 1976)

Carma M. Pooley, 29 IBLA 304 (Mar. 30, 1977)

Jack Koegel, 30 IBLA 143 (May 12, 1977)

An oil and gas lease application covering lands in an outstanding lease, whether that lease is valid, void or voidable, must be rejected. A noncompetitive oil and gas lease offer covering lands in a known geologic structure must be rejected, such lands being subject to lease only by competitive bidding.

Duncan Miller, 21 IBLA 21 (June 16, 1975)

A noncompetitive oil and gas lease must be canceled where the land described therein was determined by the United States Geological Survey to be within a known geological structure of a producing oil or gas field as of the date of the signing of the lease on behalf of the United States by the authorized officer.

William T. Alexander, 21 IBLA 56 (June 18, 1975)

It is proper to reject an oil and gas lease offer to the extent of conflict with an Alaska State selection application after the application has been tentatively approved even though the offer was filed before the selection application.

C. Burglin et al., 21 IBLA 234 (Aug. 11, 1975)

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Connie Mull, 22 IBLA 307 (Nov. 10, 1975)

Where an offeror failed to take an appeal from a decision issuing a noncompetitive oil and gas lease but erroneously rejecting certain available lands while correctly rejecting other lands in the offer and the offeror failed to retender rental for the erroneously rejected lands, and where the error could be readily apparent to the offeror, and the offeror acquiesced for a year and a half in the lease as issued, such failure precludes the amendment of the lease and the offeror is deemed to have abandoned his preference right as the first-qualified applicant to lease the land which was erroneously rejected.

John Oakason, 23 IBLA 336 (Jan. 21, 1976)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due. An attempt to make payment after the close of office hours on the day the payment is due will not prevent the disqualification.

W. Duane Kennedy, 24 IBLA 152 (Mar. 10, 1976)

Where an oil and gas lease offer is rejected because the land was received by the United States as part of a sec. 8, Taylor Grazing Act exchange, and the record does not indicate such an exchange took place the case will be remanded for consideration in light of the actual record.

Husky Oil Co. of Delaware, 26 IBLA 194 (Aug. 11, 1976)

Lands within a known geologic structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected.

James A. Wallender, 26 IBLA 317 (Aug. 30, 1976)

Curtis D. Wheeler, 31 IBLA 354 (July 25, 1977)

An offeror is properly disqualified from receiving a noncompetitive oil and gas lease on an offer which is drawn first from a group of simultaneously filed offers when he fails to pay the first year's advance rental within 15 days of his receipt of notice that such rental is due, and the delay is attributable to his posting of the rental check with insufficient postage.

Edgar C. Pennington, Jr., 28 IBLA 65 (Nov. 10, 1976)

Regardless of whether offeror is described as "*un*qualified" or "*dis*qualified," 43 CFR 3112.5-1 requires that upon successful drawees' failure to pay first year's rental, the lands shall be listed subsequently under the simultaneous drawing procedure rather than leased under the regular over-the-counter procedure in 43 CFR Subpart 3111.

Robert G. Lynn, 28 IBLA 310 (Jan. 14, 1977)

Where the Bureau of Land Management has determined that lands listed under the simultaneous oil and gas leasing system should not have been listed solely because the lands lie within "a critical watershed which is to be the subject of an Environmental Impact Statement," the first-drawn offer will not be rejected but may remain in suspended state until completion of the EIS and determination at that time whether the lands may be leased subject to stipulations for protection of the watershed.

Adrian Overton, 29 IBLA 66 (Feb. 18, 1977)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date.

Raymond N. Joeckel, 29 IBLA 170 (Mar. 18, 1977)

Milton J. Lebsack, 29 IBLA 316 (Mar. 30, 1977)

Doris M. Sterkel, Richard L. Sterkel, 30 IBLA 39 (Apr. 12, 1977)

K O Exploration, Inc., 30 IBLA 209 (May 20, 1977)

Francis L. Hill, 32 IBLA 202 (Sept. 16, 1977)

Thomas G. Faile et al., 32 IBLA 302 (Sept. 30, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Raymond N. Joeckel et al., 30 IBLA 32 (Apr. 11, 1977)

Karen Cotter et al., 30 IBLA 88 (Apr. 27, 1977)

Duncan Miller, 30 IBLA 90 (Apr. 27, 1977)

William C. Kirkwood, 31 IBLA 178 (July 5, 1977)

Duncan Miller, 31 IBLA 349 (July 22, 1977)

Fred Goodstein, 32 IBLA 25 (Aug. 31, 1977)

Paul Landis, 32 IBLA 378 (Oct. 31, 1977)

Jerry Chambers, 33 IBLA 323 (Jan. 16, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date.

Jerry J. Hunnicutt et al., 30 IBLA 86 (Apr. 27, 1977)

Except for establishing priority of filing, the drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror. If subsequent to the filing of a noncompetitive oil and gas lease offer and prior to issuance of a lease the land described therein is determined to be in a known geological structure of a producing oil or gas field, the noncompetitive lease offer must be rejected.

Guy M. Franson, 30 IBLA 123 (May 12, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued pursuant to the simultaneous filing procedures where the drawing was held prior to the effective date of the rent increase, and leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Casey C. Jensen et al., 30 IBLA 134 (May 12, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued to successful offerors at simultaneous drawings held prior to the effective date of the rate increase.

Melvin B. Hobgood, 30 IBLA 163 (May 18, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn prior to the effective date of the increase.

Marie A. Fiel et al., 30 IBLA 308 (June 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date.

Guy H. Willis, 30 IBLA 344 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate applies to all leases issued after that date, regardless of the date the offer to lease or drawing entry card was filed.

Duncan Miller, 30 IBLA 350 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offer was filed prior to the date of the regulation. The imposition of the increased rate is not discriminatory as it applies to all leases issued after a certain date.

Guy H. Willis, 30 IBLA 373 (June 10, 1977)

The filing of a noncompetitive oil and gas lease offer, prior to acceptance, does not create any right to a lease or legal interest which restricts the discretionary authority of the Secretary of the Interior over lease issuance. Thus, an amended regulation raising the lease rental charge may be applied to lease offers which have been previously filed but not accepted and such action is not violative of the Fifth Amendment.

Barbara A. Joeckel, 30 IBLA 376 (June 10, 1977)

43 CFR Subpart 3112 renders invalid an over-the-counter oil and gas lease offer filed for lands in canceled or relinquished leases or leases which have terminated by operation of law, for such lands are subject to simultaneous offers only.

Robert S. Bickel, 31 IBLA 201 (July 6, 1977)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Curtis Wheeler, 31 IBLA 221 (July 7, 1977)

A simultaneous oil and gas offeror is properly disqualified under 43 CFR 3112.4-1 from receiving lease when she fails to pay the first year's rental within 15 days of receipt of the notice that such payment is due.

Karen L. Brown, 31 IBLA 239 (July 12, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to over-the-counter filing procedures, even though the lease offers were submitted prior to the effective date of the increase.

Brad J. Hays, 31 IBLA 374 (Aug. 5, 1977)

Cecil C. Wall, 32 IBLA 27 (Aug. 31, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Altex Oil Corp., 32 IBLA 18 (Aug. 31, 1977)

Altex Oil Co., 32 IBLA 44 (Sept. 2, 1977)

Altex Oil Corp., 32 IBLA 390 (Nov. 7, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date pursuant to over-the-counter offers or pursuant to the simultaneous filing procedures, even though the offers or entry cards were filed with BLM prior to the specified date.

An oil and gas lease offer under the Mineral Leasing Act, *as amended*, 30 U.S.C. § 181 *et seq.* (1970), does not create a property right in the offeror but is merely a hope or expectation. It is not a "vested right," a present legal or equitable "title," "interest" or "ownership" or "perfected right," to come within the protection of the Fifth or Fourteenth Amendment.

D. E. Gaither et al., 32 IBLA 106 (Sept. 12, 1977)

The filing of an application for a noncompetitive oil and gas lease, prior to acceptance, does not create a right to a lease immune from application of a subsequently amended administrative regulation. An increased rental rate is properly applied to an oil and gas lease offer pending before the effective date of the rate change but which has not been accepted prior to that time.

Viola J. Kirkwood, 32 IBLA 199 (Sept. 16, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date. The filing of an application for a lease prior to its acceptance does not create a right to a lease which is immune from application of a subsequently amended administrative regulation, nor does administrative delay in the processing of the lease offer preclude proper application of such regulation.

Paul C. Rohlman, 32 IBLA 240 (Sept. 21, 1977)

Increased per acre rental, as directed under Jan. 5, 1977, revision of 43 CFR 3103.3-2(a), is applicable to all noncompetitive oil and gas leases issued after Feb. 1, 1977, including leases for which offers, both simultaneous and over-the-counter, were filed prior to revision of the regulation.

Duncan Miller et al., 32 IBLA 289 (Sept. 27, 1977)

Noncompetitive oil and gas leases are issued for a primary term of 10 years. Such leases expire automatically by operation of law at the end of their 10-year terms unless the presence of one of the statutory grounds for extension of the term is established.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Appeal of Terry E. Price and J. Burglin, 2 ANCAB 247 (Dec. 28, 1977) 84 I.D. 1007

Appeal of Jerry E. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Appeals of Ethyl E. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antwell, 2 ANCAB 302 (Feb. 21, 1978)

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

30 U.S.C. § 188(b) (1970), and its implementing regulation 43 CFR 3108.2-1, requiring a notice of deficiency on a form approved by the director apply only to rental payments due on the anniversary dates

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

of noncompetitive oil and gas leases, and are inapplicable to deficient initial rental payments for noncompetitive oil and gas lease offers.

Evelyn Chambers, 33 IBLA 271 (Jan. 5, 1978)

A junior oil and gas lease offer is properly rejected when the senior offer subsequently is accepted and the lease is properly issued.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

Where it is first alleged on appeal that a first-drawn simultaneous oil and gas entry card has been rejected in order for the lease to be awarded to the offeree first drawn in a prior drawing, which prior drawing was void because of an omitted entry card, but the record as to the second drawing is incomplete and an affected party has not been given opportunity to participate, the case may be remanded for augmentation of the record and initial consideration by Bureau of Land Management.

W. J. Langley, 34 IBLA 213 (Mar. 27, 1978)

An offer to lease for oil and gas is properly rejected where payment for the first year's advance rental is not received in the appropriate office of the Bureau of Land Management within 15 days after a Notice of Rental Due is received by the offeror pursuant to 43 CFR 3112.4-1.

Susan Dawson, 35 IBLA 123 (May 15, 1978)

Noncompetitive oil and gas leases are issued for a primary term of 10 years. Unless one of the statutory grounds for extension is established, such leases expire by operation of law at the end of their primary term.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

James E. and Mary E. Groboski, 43 IBLA 94 (Sept. 19, 1979)

Where an offeror for a noncompetitive, over-the-counter oil and gas lease certifies that he is a United States citizen, his failure to disclose whether he is a native-born or naturalized citizen will not support rejection of his offer where an offeror for a noncompetitive, simultaneous oil and gas lease is not required to disclose similar information.

Jas. O. Greene, Jr., 39 IBLA 43 (Jan. 16, 1979)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Jack J. Bender, 40 IBLA 26 (Mar. 9, 1979)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

When a State Office rejects the offer of a first-drawn applicant in a drawing under the simultaneous oil and gas leasing program, an appeal by the applicant raises the issue of his qualifications to hold the lease. The qualifications of the second-drawn applicant are irrelevant until such time as the offer of the first-drawn applicant is rejected and all his avenues of appeal are exhausted. However, it is not improper for BLM to name the second-drawn applicant as an adverse party in a decision rejecting the first-drawn applicant.

Thomas B. Flickinger, William S. Flickinger, et al., 40 IBLA 53 (Mar. 16, 1979)

OPTIONS

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

E. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

PATENTED OR ENTERED LANDS

An oil and gas lease offer must be rejected when, before the lease offer has been accepted, the land applied for has been patented with no reservation of oil and gas to the United States.

It is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application.

Lloyd W. Levi, 19 IBLA 201 (Mar. 19, 1975)

Yolana Bochat et al., 19 IBLA 204 (Mar. 19, 1975)

An oil and gas lease offer must be rejected when approval is given to a subsequently filed State selection embracing the same lands, including the mineral rights. Following issuance of patent to the State, the Department loses jurisdiction over the patented land.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

The Department of the Interior has neither jurisdiction over nor authority to issue oil and gas leases for lands patented to the State of Alaska.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

It is proper to reject an oil and gas lease offer to the extent of conflict with an Alaska State selection application after the application has been tentatively approved even though the offer was filed before the selection application.

C. Burglin et al., 21 IBLA 234 (Aug. 11, 1975)

OIL AND GAS LEASES--Continued

PREFERENCE RIGHT LEASES

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first-qualified applicant in the event the Department decides to issue a lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 28, 1975) 82 I.D. 174

PRODUCTION

Reasonable transportation costs of production from oil and gas leases from the field to the first available market are allocable to the Federal or Indian royalty interest.

Kerr-McGee Corp., 22 IBLA 124 (Sept. 26, 1975)

An oil and gas lease on which there is no well capable of production in paying quantities will terminate by operation of law if the annual rental payments are not submitted on or before the anniversary date. A well capable of production in paying quantities on the anniversary date is one which can actually produce enough oil to exceed the cost of its extraction. Neither the production of water nor the production of meager quantities of oil, albeit with hopes for paying production at some time in the future, constitute production in paying quantities on the anniversary date of the lease.

The Polumbus Corp., 22 IBLA 270 (Oct. 30, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated when the lessee shows that its failure to pay the rental on or before the anniversary date was justifiable.

Great Basins Petroleum Co., 24 IBLA 117 (Mar. 1, 1976)

"Production" as used in all Federal oil and gas leases includes all oil and gas withdrawn from a reservoir.

Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clause, M-36888 (Oct. 4, 1976) 84 I.D. 54

Oil or gas that is wasted is in a category by itself, distinctly separable from "production," when it is oil or gas that is lost on the surface or in the subsurface through the negligence of the lessee, *i.e.*, without the specific sanction of the supervisor.

Computation of Moneys Due the United States on Oil and Gas Lost as a Result of Pennzoil's Blowout, M-36888 (Supp.) (Jan. 19, 1977) 84 I.D. 64

OIL AND GAS LEASES--Continued

PRODUCTION--Continued

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee. Such lease is not held by production and terminates automatically on its final anniversary date notwithstanding the existence of a producing well on the leasehold.

Peacock Oil Company, Inc., Twin Arrow, Inc., 29 IBLA 74 (Feb. 23, 1977)

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee, pursuant to 43 CFR 3107.8-2; however, the language of the regulation is permissive and a delay in filing a renewal application may be excused in the presence of special circumstances.

Peacock Oil Company, Inc., Twin Arrow, Inc., 30 IBLA 103 (May 2, 1977)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date, even though the lease may also have production at that time.

Rio Blanco Natural Gas Co., 30 IBLA 191 (May 19, 1977) 84 I.D. 198

The U.S. Geological Survey is the technical expert of the Department of the Interior in matters concerning geologic evaluations. The Bureau of Land Management is entitled to rely on mineral determinations of Survey, such as qualification of a test well as a discovery well defined by a unit agreement, in the absence of a clear and definite showing of error.

Corrine Grace, 30 IBLA 296 (June 1, 1977)

The Department of the Interior has the authority to issue orders to oil and gas lessees to protect all of the natural resources of the Continental Shelf. An order which requires lessees to shut in wells during welding or burning operations will be sustained on appeal as not being arbitrary or unjustified where the record shows that a number of companies had followed the practice even when it was not required, where the order is not so prohibitive as to effect a *pro tanto* cancellation of the lease, and where departures from the order may be granted in certain situations.

Exxon Corp., 36 IBLA 185 (Aug. 1, 1978) 85 I.D. 347

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date.

Shell Oil Co., 36 IBLA 253 (Aug. 15, 1978)

OIL AND GAS LEASES--Continued

PRODUCTION--Continued

An oil and gas lease issued for a primary term of 10 years on which there is no production will expire by its own terms where the lessee has not commenced drilling operations on the leasehold at the end of the term, and payment of compensatory royalty will not extend the lease where there has been no showing that the leasehold is subject to drainage from wells on an adjoining property.

Webb Resources, Inc., 38 IBLA 330 (Dec. 19, 1978)

An oil and gas lease issued for a primary term of 10 years and extended for 2 years by drilling cannot be extended further by payment of compensatory royalty where there is no showing that the leasehold is suffering drainage from an adjoining tract, and no compensatory royalty has been assessed by the district supervisor under 30 CFR 221.21(c).

Chaparral Resources, Inc., 39 IBLA 269 (Feb. 15, 1979)

"A well capable of producing oil or gas in paying quantities." The provision in 30 U.S.C. § 226(f) (1976) referring to a well capable of producing oil or gas in paying quantities refers to a well which is actually in physical condition to produce a sufficient quantity of oil or gas to yield a reasonable profit over and above the costs of operating the well and marketing the product. A satisfactory test of a well to establish its capability as of the termination date is necessary. Evidence which only supports inferences is not sufficient, nor is a showing only of a potential prospect for profitable operation at some future time.

American Resources Management Corp., 40 IBLA 195 (Apr. 5, 1979)

"Paying Quantities." The term "paying quantities," used in the Brady (Deep) Unit Agreement to determine whether or not a participating area of a unit should include additional tracts where the existence of hydrocarbons in paying quantities is disputed, refers to cost of drilling and production plus a reasonable profit.

The U.S. Geological Survey is the technical expert of the Department in matters concerning geologic evaluation of oil and gas lease production, and the Secretary is entitled to rely on the Survey's determinations, as to the extent of the participating area of a unit, absent a clear showing of error.

Amoco Production Co., 41 IBLA 348 (July 11, 1979)

REINSTATEMENT

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated where it is shown, upon reconsideration of an earlier Board decision, that lessee's failure to pay the rental timely was not due to a lack of reasonable diligence. Evidence which establishes that the payment due on May 1, 1974, at the Eastern States Office, Bureau of Land Management, Silver Spring, Maryland, was mailed in Dallas, Texas, on Apr. 25, 1974, 5 days before the due date, is sufficient to demonstrate due diligence despite the fact that the envelope containing the payment was postmarked Apr. 30, 1974.

W. A. Fitzhugh (On Reconsideration), 18 IBLA 323 (Jan. 6, 1975)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Frank J. Germano, 18 IBLA 390 (Feb. 6, 1975)

Richard V. Bowman, 19 IBLA 261 (Mar. 31, 1975)

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental as required by sec. 31 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 188(b) (1970), where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Charles L. Parks, 18 IBLA 404 (Feb. 10, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessee shows that the failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence.

W. E. Hester, Jr., 18 IBLA 420 (Feb. 12, 1975)

Ray E. Rush, 19 IBLA 280 (Apr. 7, 1975)

Margaret C. Ross, 19 IBLA 307 (Apr. 7, 1975)

Jimmy V. Bowling, 20 IBLA 146 (May 5, 1975)

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where it is not shown that the failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence. Mistake as to the date the payment is due, misplacement of the courtesy notice, and the decease of appellant's husband some 2 years prior to the date payment is due, do not afford a sufficient predicate for reinstatement of an oil and gas lease.

Mary A. Christopher, 19 IBLA 53 (Feb. 21, 1975)

Reasonable diligence in sending a rental payment due on the anniversary date includes transmitting the payment so that it will normally be received in the appropriate office on the anniversary date considering the method of transmission, normal delays in handling, and the distance involved.

Failure to pay advance rentals on or before the anniversary date may be justifiable only if the reason for such failure is proximate in time to the anniversary date and may reasonably be considered to be the proximate cause of the failure to submit the payment on time.

The burden of proving that failure to pay advance rentals on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence is the obligation of the one who failed to make timely payment.

M. J. Harvey, Jr., 19 IBLA 230 (Mar. 25, 1975)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease, terminated by operation of law because the annual rental payment was not received until 1 day after the due date, may be reinstated upon proper application where the delay in payment is due to accidental injury which prevented lessee's business from being conducted in normal manner.

David Kirkland, 19 IBLA 305 (Apr. 7, 1975)

A lessee's request that its oil and gas lease be reinstated because it relied on a regulation which has been changed is properly rejected where the lease expired by operation of law at the end of its extended term and there is no statutory authority whereby it can be reinstated.

Inexco Oil Co., 20 IBLA 134 (May 5, 1975)

An oil and gas lease terminated by operation of law for failure to pay the annual rentals on time may be reinstated where the lessee's delay in making payment was due to his seeking clarification of an illegible notice of payment sent by the Bureau of Land Management, and his action demonstrates his reliance on the notice.

Joseph E. Steger, 20 IBLA 206 (May 8, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance annual rental on time may be reinstated only when the lessee shows that his failure to pay the rental timely was either justifiable or not due to lack of reasonable diligence. The neglect of office personnel to follow appellant's instructions to make payments while he was away from his office on a combined business and vacation trip is not a predicate for either basis for relief.

Charles C. Sturdevant, 20 IBLA 280 (May 22, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing by the lessee that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Failure to raise credible reasons that illness prevented timely payment, with no other justification for late payment, requires denial of reinstatement.

Mrs. Charles H. Blake, 20 IBLA 322 (June 6, 1975)

An oil and gas lease which has terminated by operation of law due to late payment of the annual rental may not be reinstated where the failure to pay on time was due to a lack of reasonable diligence. Where a payment is sent from a town in eastern Texas to Salt Lake City, Utah, on Oct. 30, and does not arrive until after Nov. 1, and where the Post Office indicates that regular mail sent that distance would not normally arrive in 2 days, the lessee has not exercised reasonable diligence.

William N. Cannon, 20 IBLA 361 (June 12, 1975)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay rental on or before the anniversary date where the petitioner has not shown either that her failure was justifiable or not due to a lack of reasonable diligence.

Faye A. Nicholas, 21 IBLA 69 (June 25, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing that failure to pay on or before the anniversary was either justifiable or not due to lack of reasonable diligence. Appellant's misinterpretation of the due date on the courtesy notice does not justify his late payment of the rent.

Norman E. Parker, 21 IBLA 144 (July 15, 1975)

The difficulties of a lessee in obtaining sufficient money to pay an oil and gas lease's advance rental is not a "justifiable" reason such as would permit the reinstatement of an oil and gas lease terminated for failure to timely pay the advance rental.

Anthony Theophilus, 21 IBLA 287 (Aug. 11, 1975)

Before relief may be granted to the lessee of a terminated oil and gas lease, he must comply with the prerequisites set forth in 30 U.S.C. § 188 (1970). The Secretary has no authority to waive such statutory prerequisites.

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by opertion of law nor serve to justify a failure to pay the lease rental timely.

The Secretary has no authority to reinstate a terminated oil and gas lease unless the rental payment is tendered within 20 days of the due date. Such authority also does not exist if a valid oil and gas lease has been issued covering any of the lands in the terminated lease.

A Notice of Termination is sent to the lessee of a terminated oil and gas lease only if he has tendered payment of the rental within 20 days after the anniversary date.

C. J. Iverson, 21 IBLA 312 (Aug. 14, 1975) 82 I.D. 386

Where the rent for an oil and gas lease was not mailed by the lessee until 14 days after due date because the lessee was away from his residence where he received his mail and the courtesy notice of rental payment due did not receive proper attention when it arrived, rejection of the petition for reinstatement for lack of reasonable diligence or circumstances causing the neglect to be justifiable is proper.

L. E. Weiner, 21 IBLA 336 (Aug. 18, 1975)

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the lessee does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The fact the courtesy

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

rental notice did not come to the attention of the lessee until 6 days after the rental due date is not a justifiable excuse for late payment of the rental.

Levi T. Bellah, 22 IBLA 1 (Sept. 4, 1975)

Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent.

Nikoa, Inc., 22 IBLA 6 (Sept. 4, 1975)

Pauline V. Trigg, John H. Trigg, 31 IBLA 296 (July 22, 1977)

An oil and gas lease terminated by operation of law for failure to pay the advance rent on time may be reinstated only on a showing by the lessee that his failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. A failure to exercise reasonable diligence is justifiable when caused by a factor outside the control of the lessee. A lessee's personal illness does not justify late payment unless it is of such a debilitating nature that it actually prevents the lessee from posting payment. Appellant's ability to attend to other business shows that his illness did not prevent him from making timely payment of the rent.

Milan de Lacy, 22 IBLA 47 (Sept. 16, 1975)

An oil and gas lease, terminated by operation of law for failure to make timely payment of the advance rental, may be reinstated only when the failure to make payment of the annual rental on or before the anniversary date was justifiable or not due to a lack of reasonable diligence. Mailing the rental payment from California to Montana the day before its due date does not constitute reasonable diligence.

Joseph Wachter, 22 IBLA 95 (Sept. 22, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only upon a showing that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Inability to pay the rent on time does not justify late payment.

Peter T. Creamer, 22 IBLA 175 (Sept. 30, 1975)

No petition for reinstatement of an oil and gas lease terminated by operation of law, 30 U.S.C. § 188(b) (1970), may be entertained if the full amount of rental due was not paid within 20 days after the anniversary date of the lease.

Joseph Francis, 22 IBLA 277 (Oct. 30, 1975)

Failure to pay advance rental on or before the anniversary date of an oil and gas lease may be justifiable only if the reason for such failure is proximate in time to the anniversary date and may reasonably be considered to be the proximate cause of the failure to timely submit the payment.

Phillip Stimatze, 22 IBLA 309 (Nov. 10, 1975)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. Neither the absence of lessee on vacation nor non-receipt of an advance courtesy notice satisfies the statutory criteria.

Joseph M. Nosachi, 23 IBLA 148 (Dec. 23, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessees show that their failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. The absence of a lessee either on vacation or on job training is insufficient to satisfy the statutory criteria.

Sara Turcsan, Donna Turcsan, 23 IBLA 370 (Jan. 23, 1976)

An oil and gas lease terminated by operation of law for failure to pay timely the advance rental may be reinstated only where the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. Past adherence to the requirement of timely payment does not justify a subsequent failure to make timely payment. Mailing a rental payment at Chicago, Illinois, to Salt Lake City, Utah, 1 day before the due date does not constitute reasonable diligence.

Henry Carter, 24 IBLA 70 (Feb. 24, 1976)

A petition for reinstatement of an oil and gas lease which has expired by operation of law for failure to make payment of the annual rentals on time will be denied where the petition is filed with the appropriate office more than 15 days after receipt of notification of termination of the lease.

Where the advance rental check is received within 20 days after the anniversary date, the Bureau may deposit said check in an "unearned" account in order to preserve the right of the lessee to petition for reinstatement of the terminated lease and to safeguard the check, create a record of the payment, and bring it under accounting control. This does not signify acceptance of the payment, or indicate that the lease has not terminated, or create an estoppel against the Government.

John J. Nordhoff, Dean Kirk, 24 IBLA 73 (Feb. 24, 1976)

A lessee who is out of town on vacation on the lease anniversary date and who mails the lease rental payment 6 days after the due date is not reasonably diligent.

Extenuating circumstances outside the control of the lessee occurring near the anniversary date of the lease may constitute justifiable cause for a late rental payment where the circumstances are the proximate cause of the failure to make timely payment. However, where appellant has delayed payment until just before the due date and has entrusted the function to an agent whose subagent neglects to make payment timely, the lack of diligence on the part of the lessee and/or his agent and/or subagent, and not the adverse circumstances confronting appellant's agent, constitute the proximate

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

cause of the late payment and a decision denying reinstatement will be affirmed.

Lucille Lirrhardt, 24 IBLA 81 (Feb. 25, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time cannot be reinstated when the petitioner fails to show that the late payment of rental was justifiable or not due to a lack of reasonable diligence. Loss of a checkbook through theft 5 days before the due date for payment does not establish causality sufficient to constitute a justifiable excuse.

John E. Stengel, 24 IBLA 98 (Feb. 25, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely may be reinstated only if the lessee shows by satisfactory evidence that the failure to pay the rental on or before the anniversary date was either justifiable or was not due to a lack of reasonable diligence. Allowing 1 day for the rental payment to reach Billings, Montana, from Eau Claire, Michigan, is not an exercise of reasonable diligence, and inability to pay is not a justifiable reason for failure to make timely payment.

Frank Thompson, 24 IBLA 105 (Mar. 1, 1976)

An oil and gas lease terminated because of failure to pay rental timely, may be reinstated only where it is shown that such failure was either justifiable or not due to a lack of reasonable diligence. The burden of satisfying either of those criteria rests upon appellant.

Reasonable diligence requires that the payment be sent sufficiently in advance of the due date to account for normal delays in handling and delivery of the mails. Absent reasonable diligence, a lease may be reinstated if the delay was justifiable. This generally envisages factors beyond appellant's control, which were the proximate cause of the failure to pay timely. Thus, proximity in time and causality of the untoward occurrence are essential elements required to be shown.

Earl Chancellor, 24 IBLA 121 (Mar. 1, 1976)

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment is tendered at the proper office within 20 days of the due date.

Cashing of an oil and gas rental check, received more than 20 days after due, does not constitute a waiver which would permit reinstatement of a terminated lease in violation of 30 U.S.C. § 188(c) (1970), despite wording on the check that "by endorsement this check when paid is accepted in full payment."

Edward Malz, 24 IBLA 251 (Mar. 26, 1976)
83 I.D. 106

Reasonable diligence requires transmitting a rental payment so that it would normally be received in the appropriate office on or before the anniversary date considering the method of transmission, normal delays in handling, and the distance involved. A payment that is late because it was inadvertently sent by the lessee

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

to the wrong address is neither justifiable nor the result of reasonable diligence.

Mike Bell Mining & Oil Co., Inc., 24 IBLA 255 (Mar. 29, 1976)

An oil and gas lease which has terminated by operation of law for failure to pay the annual rental on or before the due date may not be reinstated unless, among other things, payment has been tendered at the proper office within 20 days of the anniversary date.

Merilyn F. Buxton, C. E. Sharpe, 24 IBLA 269 (Mar. 29, 1976)

A. E. White et al., 28 IBLA 91 (Nov. 12, 1976)

Beatrice G. Wood, 42 IBLA 148 (Aug. 16, 1979)

An oil and gas lease may be reinstated where it appears that the lessee's failure to pay annual rental on time is due to the death of a member of the family in close proximity to the anniversary date of the lease.

Fredres E. Laubaugh, 24 IBLA 306 (Apr. 5, 1976)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence.

Pollis Arnold, 24 IBLA 352 (Apr. 23, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated when the lessee shows that his failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence.

An oil and gas lease, terminated because the advance rental was received 1 day after the due date, may be reinstated where it is shown that the lessee mailed the rental payment 3 days prior to the due date from the main post office in the same city where the BLM's field office is located and the postal authorities verify that there had been a delay in the processing of the mail at that particular time. Under these circumstances, the lessee will be considered to have mailed the payment with due diligence.

A. Melander, 25 IBLA 54 (May 18, 1976)

An oil and gas lease which has terminated by operation of law due to late payment of the annual rental may not be reinstated where the failure to pay on time was due to a lack of reasonble diligence and was not justifiable. Late payment due to a mistaken address is neither justifiable nor demonstrative of reasonable diligence.

Warren Koch, 25 IBLA 61 (May 28, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

or not due to lack of reasonable diligence. Inadvertence of the lessee's employee in misplacing the courtesy notice does not justify late payment.

Samuel J. Testagrossa, 25 IBLA 64 (May 28, 1976)

In order to constitute justifiable cause for lessee's failure to make timely rental payment for an oil and gas lease, the asserted extenuating circumstances must be the proximate cause of the late payment. A petition for reinst.tement is properly denied where lessee's own statements disclose that this is not the case.

Arthur J. Jakobiak, 25 IBLA 147 (June 8, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time cannot be reinstated when the petition fails to show that the late payment was justifiable or not due to a lack of reasonable diligence. A payment that is late because it was inadvertently sent by the lessee to the wrong address is neither justifiable nor the result of reasonable diligence.

Frank H. Crosby, 25 IBLA 160 (June 14, 1976)

The regulations require that a petition for reinstatement of an oil and gas lease, terminated by operation of law for failure to make timely payment of the rental, must be filed within 15 days of receipt of notice by the lessee of such termination. A petition for reinstatement filed more than 15 days after receipt of such notice of termination, which notice informed lessee of the 15-day requirement, is properly denied.

Joseph S. Calabrese, 25 IBLA 241 (June 22, 1976)

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The inadvertence or negligence of the appellant's employee does not justify late payment of the rental.

The fact that the courtesy rental notice did not come to appellant's attention until 6 days after the rental due date is not a justifiable excuse for late payment of the rental.

James Donoghue, 25 IBLA 280 (June 25, 1976)

An oil and gas lease which has terminated by operation of law due to late payment of the annual rental may be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Mailing the payment after noon on the day the payment is due shows a lack of reasonable diligence. Belief that the payment would arrive on time if deposited in a "special box" does not justify the late payment.

Constitution Petroleum Co., Inc., et al., 25 IBLA 319 (June 30, 1976)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated where it is shown that the lessee's failure to pay the rental timely was not due to a lack of reasonable diligence. Evidence which establishes that the payment due on Dec. 1, 1975, at the Eastern States Office, Bureau of Land Management, Silver Spring, Maryland, was delivered to a postal carrier on Nov. 11, 1975, is sufficient to demonstrate due diligence despite the fact that the envelope containing the payment was postmarked Dec. 8, 1975, and not received until Dec. 11, 1975, where a credible explanation of the delay has been furnished by the Post Office.

Paul D. Beaird, Jr., and Leon F. Scully, Jr., 26 IBLA 79 (July 13, 1976)

The Bureau of Land Management has no authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental on or before the anniversary date when a valid lease for the same land has been issued prior to the filing of the petition for reinstatement. Therefore, unless the first lease is deemed not to have terminated, it is erroneous to cancel the subsequent valid lease.

S. Norman Stark, 26 IBLA 87 (July 19, 1976)

An oil and gas lease, terminated by operation of law, 30 U.S.C. § 188(b) (1970), for failure to make timely payment of the rental on or before the anniversary date, can be reinstated only if the lessee shows that the failure was either justifiable or not due to a lack of reasonable diligence.

Where the facts of a case lend circumstantial support and credibility to lessees' assertion that they posted their rental payment sufficiently in advance of the time necessary to account for normal postal delays, the lease may be reinstated on the basis that the failure to make timely payment was not due to a lack of reasonable diligence.

Elliott and Leon Davis, 26 IBLA 91 (July 19, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence. Late payment of the rental is not justified by confusion concerning proper processing of the rental payment which resulted when the duty to make payment was transferred from the company's land manager to its accountant.

The fact that the courtesy rental notice was delayed in reaching appellant because it was sent to appellant's former address is not a justifiable excuse for late payment.

Seric Exploration Co., 26 IBLA 106 (July 26, 1976)

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless rental payment is tendered at the proper office within 20 days after the due date.

Albert DiGiulio, Jr., Genuino J. Grande and Jeffrey V. Cohen, 26 IBLA 169 (Aug. 4, 1976)

Vern H. Polinder, 30 IBLA 26 (Apr. 11, 1977)

Continued--

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Susan Krammes Sammis, 37 IBLA 269 (Oct. 19, 1978)

Sigmund Matejko, 43 IBLA 96 (Sept. 20, 1979)

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the due date may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Sending a payment 2 days before the due date does not constitute reasonable diligence, nor does the fact that lessee was unaware of the terms of his lease render his tardiness justifiable.

L. J. Arrieta, 26 IBLA 188 (Aug. 10, 1976)

No petition for reinstatement of an oil and gas lease terminated by operation of law may be entertained if the full amount of rental due was not paid within 20 days after the anniversary date of the lease.

Where an oil and gas lease has terminated pursuant to 30 U.S.C. § 188(b) (1970), a petition for reinstatement is properly denied which fails to provide any explanation to show that the lessee's failure to tender the full amount of the rental when due was either justified or not attributable to the lessee's lack of diligence.

Where, by prearrangement, as part of a business negotiation, a third party assumes responsibility for the payment of the annual rentals for two oil and gas leases which subsequently terminate by operation of law when the rental check is dishonored by the drawee bank, the leases will not be reinstated on the strength of the lessee's naked assertion that the uncollectability of the check was deliberately contrived as part of a scheme to deprive him of the lease so that the third party could be granted the leases unlawfully by a Federal employee.

Stanley J. Pirtle, 26 IBLA 348 (Sept. 7, 1976)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

In petitioning for reinstatement of an oil and gas lease terminated by operation of law for failure to submit the rental payment on or before the anniversary date of the lease, forgetfulness, simple inadvertence, or ignorance of the regulations are not justifiable excuses for delay in making the rental payment.

Lula Mai Martin, 27 IBLA 360 (Nov. 4, 1976)

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the due date may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Sending a payment over a long distance 2 days before the due date does not constitute reasonable diligence.

Royal and Jean Clausing, 28 IBLA 129 (Nov. 19, 1976)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Where a lessee makes a deficient rental payment for his oil and gas lease claiming that such payment was determined in accordance with the rental or acreage figure stated in the lease, he will not be entitled to a Notice of Deficiency, pursuant to 43 CFR 3108.2-1, when it is shown that he received notice of an increase in the lease rental and, therefore, was not justified in relying on the original rental figure in the lease.

An oil and gas lease terminated by operation of law for failure to pay the full advance rental timely can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

Lone Star Producing Co., 28 IBLA 132 (Nov. 19, 1976)

There is no basis for reinstating an oil and gas lease, terminated for failure to pay rental timely, because of alleged reasonable diligence when the payment was mailed no earlier than the date the rental was due.

An oil and gas lease terminated for failure to pay rental timely may not be reinstated where the delay in paying the rental was not "justifiable" within the meaning of the Mineral Leasing Act, 30 U.S.C. § 188(c) (1970), because it was due to financial and other difficulties not within the contemplation of the Act.

Dolores B. Beggie, 28 IBLA 272 (Dec. 20, 1976)

If the postmark on the rental payment envelope does not demonstrate reasonable diligence in the lessee's mailing of the payment, the Board will not go beyond it in the absence of exceptional circumstances. Substantial evidence will be required to corroborate any allegation to the contrary. A mere reference to a statement indicating that a check in payment of the rent was issued or sent on a certain date is not, by itself, sufficient.

Agnes M. French, 28 IBLA 282 (Dec. 27, 1976)

An oil and gas lease, terminated by operation of law for failure to pay timely the advance rental, will not be reinstated where the sole reason offered as justification for the tardy payment is the confusion and business disruption which attended the remodeling of the corporate lessee's office space. Employee neglect or inadvertence likewise will not serve as justification.

Mono Power Co., 28 IBLA 289 (Dec. 27, 1976)

The discretionary authority granted to the Secretary of the Interior by 30 U.S.C. § 188(d) (1970), to reinstate oil and gas leases terminated for failure to pay rental timely, which leases are eligible for extensions under 30 U.S.C. § 226-1(d) (1970), because drilling operations commenced prior to the end of the term of the lease and were being diligently prosecuted at that time, applies only to oil and gas leases issued before Sept. 2, 1960. An oil and gas lease issued after that date, which has terminated for failure to pay rental timely, can be reinstated only under the provisions of 30 U.S.C. § 188(c) (1970).

The provisions of 30 U.S.C. §§ 188(b) and (c) (1970), and decisions of the Board discussing those provisions, are generally applicable to both competitive and noncompetitive oil and gas leases on which there is no well capable of producing oil or gas in paying quantities.

An oil and gas lease which has terminated by operation of law for failure to pay the annual rental timely may

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

not be reinstated under 30 U.S.C. § 188(c) (1970), unless, among other things, payment has been tendered at the proper office within 20 days of the date due.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the anniversary date of the lease may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Where information concerning the terminal illness of lessee's brother demonstrates the requisite proximity and causality to justify the delay in payment, the lease may be reinstated.

Billy Wright, 29 IBLA 81 (Feb. 23, 1977)

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. A number of factors caused by the inadvertence or negligence of appellant's employees which combined to cause late payment of the rental do not justify the failure to make a timely payment.

Phillips Petroleum Co., 29 IBLA 114 (Feb. 23, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee whose payment is mailed 6 days after the due date is not reasonably diligent.

Extenuating circumstances outside the control of the lessee occurring near the anniversary date of the lease may constitute justifiable cause for a late rental payment where the circumstances are the proximate cause of the failure to make timely payment. However, where appellant has entrusted payment to an agent who becomes ill, and a subagent, who assumes the agent's responsibilities neglects to make payment timely, the illness of the agent is not the proximate cause of the late payment where no connection is made between the date of the agent's illness and the due date of the rental and a decision denying reinstatement will be affirmed.

The burden of proving that the late payment was either justifiable or not due to a lack of reasonable diligence is on the lessee, and this burden includes showing the proximity of the occurrence to the anniversary date.

Lucyann W. Cameron, 29 IBLA 141 (Mar. 4, 1977)

An appeal to the Board of an automatic termination of an oil and gas lease will be dismissed as not ripe where appellant sends the appeal to the Board before a Notice of Termination of Lease has been issued and a Petition for Reinstatement rejected by the State Office, Bureau of Land Management.

Read & Stevens, Inc.; Franklin, Aston & Fair, Ltd.; and Colorado Interstate Gas Co., 29 IBLA 154 (Mar. 4, 1977)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A late payment of rental due for an oil and gas lease results in termination of the lease, and the lease will not be reinstated, where the lessee relied upon a third party to pay the rental, but no acceptable justification is shown for the delay.

Lynn Schusterman, 29 IBLA 182 (Mar. 18, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee whose payment is mailed more than 16 days after the due date is not reasonably diligent.

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the lease rental timely.

Energy Reserves, Inc., 30 IBLA 11 (Apr. 4, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. Where payment is mailed 3 days after the anniversary date and where due to a combination of trips in other vehicles, farm chores, and simple inadvertence, it was left on a car seat for 4 days, the failure to exercise reasonable diligence is not justifiable because the factor causing the delay is not one which is ordinarily outside of the control of the lessee.

Mildred W. Bernthal, Shirley M. Bernthal, 30 IBLA 18 (Apr. 7, 1977)

A lessee whose oil and gas lease terminated by operation of law for failure to pay rental timely may be found to have exercised "reasonable diligence" in mailing the rental payment on Oct. 29 when it was due on Nov. 1, and the lease should therefore be considered for reinstatement.

George C. Ott, 30 IBLA 146 (May 16, 1977)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

In petitioning for reinstatement of an oil and gas lease terminated by operation of law for failure to submit the rental payment on or before the anniversary date of the lease, simple inadvertence, or ignorance of the regulations are not justifiable excuses for delay in making the rental payment.

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment is tendered at the proper office within 20 days of the due date.

Apostolos Paliombeis, 30 IBLA 153 (May 16, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee who mails payment from New York City to Cheyenne, Wyoming, 2 days before the anniversary date is not reasonably diligent.

Rosemary Weaver et al., 30 IBLA 227 (May 26, 1977)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not satisfy the reasonable diligence requirement, nor does the absence of lessee's president from the company office serve to justify the lack of reasonable diligence.

Helena Silver Mines, Inc., 30 IBLA 262 (May 31, 1977)

A petition for reinstatement of an acquired lands oil and gas lease terminated for lack of timely payment of the rental is properly denied where the lessee fails to show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The error of an employee in failing to recognize that rental payment was required for the leases in question does not justify the failure to make a timely payment.

Shell Oil Co., 30 IBLA 290 (June 1, 1977)

An oil and gas lease terminated by operation of law for failure to pay advance rental on time may be reinstated only when the lessee shows that his failure to pay the rental on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Mailing the rental due in Reno from Las Vegas on the day before the anniversary date does not constitute reasonable diligence nor is the inexperience or lack of knowledge of any employee a justifiable reason for the late payment.

An oil and gas lease terminated by operation of law for failure to pay the annual rental on or before the anniversary date will not be reinstated solely because the State Office deposited the late rental check.

Nevada Western Oil Co., 30 IBLA 379 (June 10, 1977)

The Board of Land Appeals will entertain and grant a motion by the Bureau of Land Management to remand an oil and gas lease case on appeal to the Board from a decision holding the lease had terminated and denying a petition to reinstate the lease, where BLM discovered, while the case was on appeal, that its decision was predicated on an erroneous factual basis in that annual rental for the lease had actually been paid on time, but the check had been misplaced by BLM and was later found.

Kathryn A. Dalton, 31 IBLA 1 (June 15, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. Instances of forgetfulness, simple inadvertence or ignorance of the regulations are not covered. Where payment is mailed from Binghamton, New York, to Salt Lake City, Utah, 1 day before the anniversary date the lessee cannot be said to be reasonably diligent.

An estoppel of the Government to refuse acceptance of late rental payments is not created where in the past the BLM accepted rental payments after the anniversary date pursuant to 43 CFR 3103.3-2(e)(1) providing if the office to receive payment is closed on the anniversary date, payment will be considered timely if received on the next official working day.

A prerequisite of the reinstatement process is the tender of payment within 20 days of the anniversary date which protects the right of the lessee to petition for reinstatement. The check is then deposited in an unearned account to create a record of it, and bring it under accounting control, however, depositing of the check does not create an estoppel against the Government.

Adolph F. Muratori, 31 IBLA 39 (June 21, 1977)

A lessee generally has not demonstrated reasonable diligence where the rental payment was postmarked in California the day before it was due in Utah. An allegation that the payment was mailed prior to the postmark date must be corroborated by sufficient evidence. A suggestion that the rental check was mailed on the date written and allegations of poor services by the local post office are not sufficient alone to overcome the postmark date.

David M. Gregg, 32 IBLA 293 (Sept. 28, 1977)

A lessee requesting reinstatement of an oil and gas lease terminated for failure to pay rental timely must show that he deposited the rental payment in the mail sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail in order to demonstrate reasonable diligence under 30 U.S.C. § 188(c) (1970).

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse for reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record resulting in the lessee not receiving the courtesy notice does not relieve the lessee from the obligation to pay rental timely.

Richard C. Corkyn, 32 IBLA 296 (Sept. 28, 1977)

An oil and gas lease, terminated by operation of law for failure to pay annual rental timely, may be reinstated only if, among other things, the lessee exercised reasonable diligence, *i.e.*, the lessee sent the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal and delivery of the mail, or if the lessee can show his failure to pay timely was justifiable, *i.e.*, the delay was caused by factors outside his control, which were the proximate cause of the failure.

The oil and gas lessee of record is responsible for paying rental timely and for meeting the reinstatement requirements. The fact that a lessee attempts to assign his lease does not absolve him of the rental and reinstatement requirements until the assignment is approved by the Bureau of Land Management.

A rental payment mailed in Houston, Texas, the day before it was due in Denver, Colorado, does not alone show an exercise of reasonable diligence. An argument that the failure of a rental payment to arrive timely

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

was the fault of the U.S. Postal Service does not provide justifiable excuse for reinstatement of the lease in the absence of reasonable diligence.

Leonard A. J. Tancredi, 32 IBLA 325 (Oct. 11, 1977)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Where the evidence of a postmark indicating that a rental payment was mailed after its due date is unrebutted, it must be held that reasonable diligence on the part of the lessee has not been shown.

Iola D. Long, 32 IBLA 333 (Oct. 18, 1977)

A lessee generally has not demonstrated reasonable diligence where the rental payment was postmarked in California the day before it was due in Nevada. An allegation that the payment was mailed prior to the postmark date must be corroborated by sufficient evidence. An assertion that the rental check was mailed 2 days before the due date and allegations of poor service by the local post office are not sufficient alone to overcome the postmark date.

Richard L. Triplett II, 32 IBLA 369 (Oct. 31, 1977)

Ordinarily the postmark date on a letter will be deemed the date of mailing. This inference may be rebutted on showing satisfactory, circumstantial evidence to lend credibility to an earlier date. A letter from postal authorities, acknowledging that a posted pickup schedule erroneously indicated pickups on Sundays and holidays, especially where the letter is accompanied by a photograph of the posted schedule, sufficiently corroborates lessee's contention that he mailed the rental payment prior to a Sunday and Monday holiday to rebut the inference resulting from a postmark of the following Tuesday.

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversay date to account for normal delays in the collections, transmittal, and delivery of the payment considering the distance involved. Where a letter is to be mailed from Brooklyn, New York, to Salt Lake City, Utah, allowing 1 day for delivery demonstrates lack of reasonable diligence, whereas allowing 3 or 4 days generally is diligent.

Edward Malz, 33 IBLA 22 (Nov. 22, 1977)

The timeliness of filing Federal tax returns and payments and of making rental payments for Federal oil and gas leases are governed by different statutes and regulations and are not the same. Receipt in the proper Bureau of Land Management office determines the timeliness of rental payment, whereas the Internal Revenue Service uses a postmark date. The postmark date is relevant in considering a Federal oil and gas lease rental only to determine if the lessee exercised reasonable diligence so as to warrant reinstatement of a lease terminated for failure to pay the rental timely.

In determining whether an oil and gas lessee exercised reasonable diligence to warrant reinstatement of a terminated lease the postmark date on the rental payment envelope is generally deemed the date of mailing unless there is satisfactory evidence to support an assertion that mailing occurred at an earlier date.

Generally, the mailing of a rental payment for an oil and gas lease 1 day before the payment date cannot be considered reasonable diligence to warrant reinstatement of a terminated lease.

Receiving the Bureau of Land Management's courtesy rental due notice too late to meet a lessee's usual business practice for mailing checks is not a justifiable excuse for delay in transmitting the payment to warrant reinstatement of a terminated lease.

The inadvertent or negligent failure of an employee or other person entrusted to mail payments for an oil and gas lessee is not a justifiable excuse for delay in transmitting the payment to warrant reinstatement of a terminated lease. Nor is the fact his prior payments have been timely filed such an excuse.

David R. Smith and Darla L. Smith, 33 IBLA 63 (Dec. 5, 1977)

The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

Page T. Jenkins, 33 IBLA 135 (Dec. 19, 1977)

An oil and gas lease terminated for failure to timely pay the annual advance rental can only be reinstated where the lessee shows to the satisfaction of the Secretary, or his delegate, that the failure to timely pay the advance rental was not due to a lack of reasonable diligence, or that such failure was justifiable.

Doris Belnap, 33 IBLA 231 (Dec. 28, 1977)

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Severe winter weather and other circumstances which prevent the lessee from mailing the rental payment in a timely fashion constitute such a factor which renders the failure to pay the rental timely justifiable.

Genevieve C. Aabye, 33 IBLA 285 (Jan. 5, 1978)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment considering the distance involved. Allowing 1 day for delivery demonstrates lack of reasonable diligence.

Payment of the annual rental on an oil and gas lease is not made until a proper form of remittance is received by the appropriate office of the Bureau of Land Management.

Failure to make payment of the annual rental on time is justifiable when owing to factors ordinarily outside the lessee's control the reasonable diligence test cannot be met. Natural disasters or the physical condition of the lessee or members of the lessee's immediate family, will justify late payment where they are the proximate cause of the late payment. Ignorance of the

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

law, a pleasure or business trip, or disregard of regular mail collection schedules will not justify late payment.

Lloyd H. and Adelheid A. Patterson, 34 IBLA 68 (Feb. 22, 1978)

When rental payment for an oil and gas lease is mailed after the date it is due, there can be no basis for reinstating the lease because of reasonable diligence.

A lessee's failure to make timely payment of annual rental on an oil and gas lease is not justified because it results from his misplacing the courtesy notice that rental is due.

Where a lessee presents no evidence that illnesses of his family members were so disruptive as to prevent him from carrying on his employment and other routine activities as usual, the late payment of rental on an oil and gas lease is not justified by these illnesses.

Albert R. Fairfield, 34 IBLA 132 (Mar. 8, 1978)

Reinstatement of an oil and gas lease terminated by operation of law may be allowed only where the lessee can establish to the satisfaction of the Secretary of the Interior that the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). When the only "payment" tendered timely consists of an unsigned check, it is not sufficient to satisfy the exculpatory standards of the reinstatement law and regulations.

An oil and gas lessee of record is responsible for paying rental timely. The fact that a lessee attempts to assign his lease does not absolve him of the rental payment requirements until the assignment is approved by the Bureau of Land Management.

Auburn C. Hunsucker, 34 IBLA 316 (Apr. 24, 1978)

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Where the lessee has gone on a trip intending to return by mid-month but is delayed by the necessity of caring for an old and ill friend whom he visited, so that he does not return until the first of the next month, the anniversary date of the lease, his failure to pay the rental timely is justifiable and the lease is to be reinstated.

C. M. Winters, 34 IBLA 350 (Apr. 26, 1978)

Failure to pay oil and gas lease rental timely may be justifiable where it was caused by factors outside the lessee's control which were the proximate cause of the late payment. A lessee's head injuries requiring hospitalization during the month before the anniversary date of the lease constitutes proximate cause sufficient to justify late payment of the rental and to warrant reinstatement of the lease.

Hubert W. Scudder, 35 IBLA 58 (May 10, 1978)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment on the day it is due does not meet the reasonable diligence requirement.

In petitioning for reinstatement of an oil and gas lease terminated by operation of law for failure to submit the rental payment on or before the anniversary date of the lease, simple forgetfulness or inadvertence are not justifiable excuses for delay in making the rental payment.

Jones K. Mullinax, 35 IBLA 73 (May 12, 1978)

An oil and gas lease, terminated automatically by operation of law for failure to pay rental timely, may be reinstated if, among other things, the failure to pay timely was justifiable or not due to a lack of reasonable diligence on the part of the lessee. Mailing the rental payment after the due date does not constitute reasonable diligence. An automobile accident occurring 25 days before the rental was due, is not a justifiable reason for reinstating the lease where it is not shown that its occurrence prevented the lessee from making timely payment. Reliance on receipt of a courtesy notice does not justify failure to pay rental timely.

Emma Pace, 35 IBLA 143 (May 22, 1978)

A Federal oil and gas lease reinstatement petition is properly denied where the petitioner avers merely that she mailed a rental check to the proper office of the Bureau of Land Management well before the anniversary date of the lease, and no evidence of this attempted payment, other than petitioner's statement, appears in the record.

Emma Sabsevitz, 35 IBLA 177 (May 23, 1978)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse upon which to predicate reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record resulting in the lessee not receiving the courtesy notice does not relieve the lessee from the obligation to pay rental timely.

Apostolos Paliomkeis, 35 IBLA 180 (May 23, 1978)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease erroneously canceled, because under 43 CFR 3112.1-1 land in canceled leases is subject to the filing of new noncompetitive lease offers only in accordance with simultaneous filing procedures.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Under 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of annual rental unless rental payment has been made or tendered within 20 days of the due date.

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental, within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when he submits payment to the BLM office administering his leases, and when BLM has the opportunity either to receive or decline it. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for reinstatement of an oil and gas lease terminated for failure to make timely payment of annual rental.

Mobil Oil Corp., 35 IBLA 265 (June 2, 1978)

An oil and gas lease terminates automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank on which it is drawn. However, if a lessee provides adequate evidence, such as an admission by a bank official, that the bank erroneously dishonored the check, the error of the bank may not vitiate the otherwise proper payment of rental to BLM.

An oil and gas lease terminated for nonpayment of rent may be reinstated under 30 U.S.C. § 188(c) (1970) if the failure to pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Where a lessee files his rental check timely, but the check is nonnegotiable because insufficient funds are on deposit in the particular bank, the lessee has not exercised reasonable diligence. Failure to pay rental timely may be justifiable where it is caused by factors outside the lessee's control which were the proximate cause of the failure. Where the lessee provides no evidence or circumstances of an alleged unaccountable delay in the electronic transfer of funds from one bank to another which resulted in the lessee's rental check being dishonored, there is no basis for reinstatement of the lease.

Don C. Wiley, 35 IBLA 302 (June 2, 1978)

A lessee requesting reinstatement of an oil and gas lease terminated for failure to pay rental timely must show that he deposited the rental payment in the mail sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail in order to demonstrate reasonable diligence under 30 U.S.C. § 188(c) (1970).

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse requiring reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record which results in the courtesy notice's arriving late does not relieve the lessee from the obligation to pay rental timely.

Gilbert Mark Castillo, 36 IBLA 32 (June 27, 1978)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease which has terminated automatically by operation of law for failure to pay rental timely can be reinstated only if, among other things, the failure to pay timely was not due to a lack of reasonable diligence or was justifiable.

In most cases, the date of the postmark on the envelope containing an oil and gas lease rental payment is deemed the date the payment was mailed. A contention that the payment was deposited in the mail prior to the postmark date must be supported by satisfactory evidence in order to rebut this inference from the postmark date.

Harrel Petroleum Corp., 36 IBLA 39 (June 27, 1978)

When an oil and gas lease terminates automatically by operation of law because the annual rental was not paid on or before the anniversary date, the lessee must show, among other things, that the failure to pay rental timely was not due to a lack of reasonable diligence or that there was a justifiable excuse for the delay in order to have the lease reinstated. Making oil and gas lease rental payments 19 days after they are due does not constitute reasonable diligence.

To constitute a justifiable excuse for delay in making an oil and gas lease rental payment sufficient to warrant reinstatement of a lease terminated for late payment of rental, a lessee must generally show the delay was caused by factors outside his control which were the proximate cause of his failure to pay the rental timely. The following are not ordinarily justifiable excuses: (1) reliance on receipt of a courtesy notice of rental; (2) selling a house and moving to another; (3) failure to show a causal link between the illness of lessee's friend and the failure to pay timely.

Frederick C. Farrington, George P. Hoffman, 36 IBLA 70 (June 30, 1978)

An oil and gas lease which has terminated for failure to pay rental timely may be reinstated upon a satisfactory showing that, among other things, the failure to pay the rental on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. Generally, mailing the payment the day before it is due does not constitute reasonable diligence. A prolonged business trip will generally not constitute a justifiable excuse for the late payment.

J. R. Oil Corp., 36 IBLA 81 (July 12, 1978)

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the anniversary date of the lease may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Where the death of a lessee's father occurs on Feb. 28, the rent is mailed no earlier than Feb. 28, and the rent is due and payable on Mar. 1, the requisite proximity and causality to justify the delay in payment is not demonstrated.

Robert W. Scudder, Eileen Scudder, 36 IBLA 191 (Aug. 3, 1978)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment considering the distance involved. Where a letter is mailed on Feb. 25 from Windom, Minnesota, to Cheyenne, Wyoming, where it is due on Mar. 1, reasonable diligence has been exercised.

John D. Holt, 36 IBLA 257 (Aug. 15, 1978)

The postmark date on a letter bearing payments of annual rental on oil and gas leases will be deemed to be the date of mailing in the absence of satisfactory evidence corroborating the lessee's assertion that the payments were mailed before the postmark date.

Mailing payments of annual rental on oil and gas leases on Sunday in New York City 3 days before they are due in Salt Lake City, Utah, does not constitute a reasonably diligent attempt to pay the rental in a timely manner, in the absence of a clear showing that the payor had good cause to believe that the letter would be collected from the mailbox that same day.

Daniel Ashley Jenks, 36 IBLA 268 (Aug. 17, 1978)

While an oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated under 30 U.S.C. § 188(c) (1970), if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence, generally forgetfulness is not a justifiable excuse for delay in making the rental payment, and mailing the payment after the due date does not constitute reasonable diligence.

Gent Davis, 36 IBLA 311 (Aug. 21, 1978)

An oil and gas lease terminated by operation of law for failure to pay advance rental timely will be reinstated when lessee shows that failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence in that payment was mailed in California 6 days before due in Wyoming State Office.

Mercedes M. Peratt, 36 IBLA 331 (Aug. 28, 1978)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment either on the day before it is due, or after it is due, does not meet the reasonable diligence requirement.

To constitute a justifiable excuse for delay in making an oil and gas lease rental payment sufficient to warrant reinstatement of a lease terminated for late payment of rental, a lessee must show that the delay was caused by factors outside his control which were the proximate cause of his failure to pay the rental timely. Negligence of an employee in making timely rental payments and subsequent false statements to her employer that timely payments were made does not relieve the employer from responsibility to verify the employee's action and to make timely payment.

Ram Petroleums, Inc., & Ramoco, Inc., 37 IBLA 184 (Oct. 11, 1978)

An oil and gas lease terminated by operation of law for failure to pay rental timely may be reinstated only where, among other things, it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Mailing a properly identified rental check after the due date does not constitute reasonable diligence, nor is there justification for the late payment because an unidentified check was received by BLM prior to the due date but returned for identification of the account to be credited.

S. Delos Chamraign, 37 IBLA 377 (Nov. 6, 1978)

"Payment." A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the due date. A check for rental does not constitute payment until it is received at the proper office.

The applicable statute limits the authority of the Department of the Interior in reinstating leases only to those situations where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Reasonable diligence normally requires sending or delivering payment to the proper office sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. Late payment of the rental is justifiable only where failure to make timely payment is the result of causes beyond the control of the lessee, and simple inadvertence in mailing the payment to the wrong office does not justify failure to send timely payment to the proper office.

Gretchen Capital, Ltd., 37 IBLA 392 (Nov. 8, 1978)

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. A number of factors caused by appellant's inadvertence, negligence, or lack of communication with its assignor, which combined to cause late payment of the rental do not justify failure to make timely payment.

Placid Oil Co., 38 IBLA 115 (Nov. 20, 1978)

A lessee's forgetfulness and inadvertence are not justifiable excuses for failure to pay the annual rental on or before the anniversary date of the oil and gas lease. Nor does mailing payment 4 days after the due date constitute reasonable diligence. The timeliness of filing Federal tax returns and payments and of making rental payments on oil and gas leases are governed by different statutes and regulations and are not the same.

Fred Purcheck, 38 IBLA 275 (Dec. 13, 1978)

An oil and gas lessee who submits payment of annual rentals with checks postdated by 15 days is not reasonably diligent in attempting to make payment thereof. So doing with the expectation that negotiation of the checks will not be delayed past the anniversary date unreasonably anticipates either that BLM will withhold processing the checks until they become valid or that the drawee bank will honor them despite the postdating.

The inadvertent error of a person entrusted to mail payments for an oil and gas lease is not a justifiable excuse for delay in making the payment to warrant reinstatement of a terminated lease.

The absence of a lessee on vacation does not justify a failure to make timely rental payment.

Benjamin T. Franklin, 38 IBLA 291 (Dec. 14, 1978)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

A lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Instances of simple forgetfulness, inadvertence, ignorance of the regulations, reliance on BLM courtesy notices, and similar occurrences do not excuse diligence.

Ronald C. and Mary A. Hill, 38 IBLA 315 (Dec. 19, 1978)

A petition for reinstatement of an oil and gas lease terminated for lack of timely rental payment is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment.

Helen Bacha, 39 IBLA 146 (Jan. 29, 1979)

An oil and gas lease which has terminated by operation of law due to late payment of annual rental will not be reinstated where it appears that the rental payment was not mailed early enough to account for the normal delays in the transmission of the mail.

Reynolds Mining Corp., 39 IBLA 405 (Mar. 2, 1979)

The burden of showing that the failure to pay annual rent for an oil and gas lease on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence is on the lessee. The fact that the lessee retained a leasing service which misrepresented that it would file appropriate assignment documents prior to the anniversary date does not justify late payment. Mailing of the annual rental payment on a date after it is due does not constitute reasonable diligence.

Sage, Bacon and Bolan, P.C., 40 IBLA 5 (Mar. 6, 1979)

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. This board has repeatedly held that reasonable diligence has not been exercised where a rental payment is posted at a time that one could not assume delivery before the statutory terminal date of the lease.

Lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee.

Bernard W. Crowe, 40 IBLA 114 (Mar. 27, 1979)

Even if it were true that termination of an oil and gas lease was in part the result of Bureau of Land Management's failure to act timely on an assignment application, there is no authority either to withhold the effect of termination under 30 U.S.C. § 188(b) (1976) or to reinstate the lease under sec. 188(c), where there has been no payment of the full rental within 20 days after termination.

Reichhold Energy Corp., 40 IBLA 134 (Mar. 29, 1979)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Estate of Kenneth F. Krammes, 40 IBLA 147 (Mar. 29, 1979)

A lessee generally has not demonstrated reasonable diligence where the rental payment was postmarked in Austin, Tex., the day before it was due in Santa Fe, N.M. An allegation that the payment was mailed prior to the postmark date must be corroborated by sufficient evidence. An assertion that the rental check was mailed 2 days before the due date and an allegation that mail service between Texas and New Mexico "is overnight" is not sufficient alone to overcome the postmark date.

Manuel F. Cueto, Jr., 40 IBLA 265 (Apr. 16, 1979)

An oil and gas lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless rental payment is tendered at the proper office within 20 days after the due date.

John A. Steele, Jr., 41 IBLA 49 (May 29, 1979)

The postmark date on an envelope bearing payment of annual rental on oil and gas lease will be deemed to be the date of mailing in the absence of evidence to the contrary.

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease which has terminated for failure to pay rental timely may be reinstated under 30 U.S.C. § 188(c) (1976) if the failure was either justifiable or not due to a lack of reasonable diligence, and where neither has been shown the application must be rejected.

Joseph W. Semien, 41 IBLA 185 (June 22, 1979)

Reinstatement of an oil and gas lease is properly denied where the lease holder of record delegated responsibility for payment to a purported assignee who failed to make timely payment of the advance rental to the proper BLM office.

Bryan Wagner and Sidney Lazard, 41 IBLA 188 (June 22, 1979)

The postmark date on a letter bearing payments of annual rental for an oil and gas lease will be deemed to be the date of mailing, in the absence of satisfactory evidence corroborating the lessee's assertion that the payments were mailed before the postmark date.

Where appellant alleges he mailed payment from York, Pennsylvania, to Salt Lake City, Utah, on Nov. 28, 1978, a Wednesday, and payment was due there on Dec. 1, 1978, a Friday, but was not received until Dec. 4, 1978, the following Monday, and envelope was postmarked Nov. 30, 1978, these facts ordinarily do not constitute a reasonably diligent attempt to pay the rental in a timely manner.

Glen C. Chronister, 41 IBLA 346 (July 11, 1979)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental the day it is due does not constitute reasonable diligence.

Where a lessee presents no evidence that illness of a family member or a heavy work load were so disruptive as to prevent him from carrying on his other routine activities as usual, the late payment of rental on an oil and gas lease is not justified by the illness or the work.

Victor Holz, 42 IBLA 284 (Aug. 27, 1979)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

Reliance on receipt of a courtesy billing notice from BLM is not a justifiable excuse upon which to predicate reinstatement of an oil and gas lease terminated for failure to pay rental timely. The fact that the courtesy rental notice was delayed in reaching appellant because it was sent to appellant's former address is not a justifiable excuse for late payment.

William E. Steiskal, 42 IBLA 304 (Aug. 27, 1979)

Where the failure to pay rental on or before the anniversary date of a lease is attributable to a breakdown in mailing procedures within the parent company of the lessee, neither reasonable diligence nor justification is shown to support a petition for reinstatement.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2) (1977).

Fuel Resources Development Co., 43 IBLA 19 (Sept. 11, 1979)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment.

When rental payment for an oil and gas lease is mailed after the date it is due, there can be no basis for reinstating the lease because of reasonable diligence.

When appellant's failure to mail his rental payment timely is caused by carelessness or inadvertance, his petition for reinstatement of an oil and gas lease is properly denied.

James E. Kordosky and Robert A. Weiss, 43 IBLA 63 (Sept. 18, 1979)

An oil and gas lease, terminated automatically by operation of law for failure to pay rental timely, may be reinstated if, among other matters, the failure to pay timely was justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When rental payment for an oil and gas lease is mailed after the date it is due, generally there can be no basis for reinstating the lease because of reasonable diligence.

The burden of showing that late payment of annual rental for an oil and gas lease is justifiable is on the lessee. An assertion of personal reasons without further explanation, is insufficient to meet this burden. Nor

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

does reliance on receipt of a courtesy notice justify failure to pay rental timely.

William A. King, 43 IBLA 255 (Oct. 10, 1979)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal and delivery of the payment.

Bureau of Land Management's cashing a late rental check and depositing it in its unearned account does not constitute acceptance of rental payment or a determination that a terminated oil and gas lease will be reinstated.

Eugene H. and Allieene A. Jankoski, 43 IBLA 323 (Oct. 29, 1979)

"Reasonable diligence." Allowing 1 day for mail delivery of an oil and gas lease rental demonstrates a lack of reasonable diligence, because reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to allow for normal delays in the collection, transmittal, and delivery of the payment.

"Justifiable." For a delay in submission of an oil and gas lease rental payment to be justifiable, lessee must show that the delay would not have occurred except for factors outside of his control.

"Justifiable excuse." The fact that a courtesy rental notice did not come to oil and gas lessee's attention until 1 day prior to rental due date is not a justifiable excuse for late payment of the rental.

Reid E. Motley, 43 IBLA 360 (Oct. 29, 1979)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, *i.e.*, due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment the day before it is due does not constitute reasonable diligence.

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

Annie Mae Buckley, 44 IBLA 99 (Nov. 20, 1979)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the anniversary date of the lease may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Where, for the first time on appeal, there are assertions concerning the death of lessee's husband, the case will be remanded to BLM for an initial determination as to whether circumstances demonstrate the requisite proximity and causality to justify the delay in payment, and reinstatement of the lease.

Agnes James, 44 IBLA 133 (Nov. 27, 1979)

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 2 days before the anniversary date of the lease does not constitute reasonable diligence.

A lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. A lessee's suffering severe, incapacitating injuries during the month before the anniversary date of the lease may constitute proximate cause sufficient to justify late payment of the rental and to warrant reinstatement of the lease.

Norman C. Stroink, 44 IBLA 188 (Nov. 30, 1979)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control which were the proximate cause of the failure.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment.

Robert H. Schaerbusch, 44 IBLA 229 (Dec. 11, 1979)

The Secretary may reinstate an oil and gas lease, terminated for failure of the lessee to make timely payment of the rental due if, *inter alia*, it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence.

Ordinarily, the postmark on a letter will be assumed to indicate the date and place of mailing in the absence of evidence to the contrary. Reasonable diligence is found where a rental payment, due in Billings, Montana, on June 1, 1979, was actually mailed from Wilmington, Delaware, on May 29, 1979, despite the fact that the

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

envelope containing such payment bears only a Billings, Montana, postmark of June 2, 1979.

Phyllis Lane Zehr, Alice M. Conte, 44 IBLA 261 (Dec. 19, 1979)

The sending of an unsigned check for the annual rental of an oil or gas lease does not constitute timely payment, even if received on or prior to the anniversary date of the lease. BLM has no obligation to present an unsigned check for payment since such a check is not a negotiable instrument.

A lessee's failure to make timely payment of annual rental on an oil and gas lease is not justified when based on ignorance of the applicable law and regulations requiring payment on or prior to the lease anniversary date.

A contention that appellants were unclear as to the anniversary date of the lease which thereupon resulted in an untimely payment of the rental will not be sustained where the Department's records correctly show the anniversary date, or the lessee has actual knowledge of the correct due date prior thereto.

C. J. Streit and Bernard J. Streit, 44 IBLA 285 (Dec. 26, 1979)

RELINQUISHMENTS

The unilateral mistake of an oil and gas lease offeror in withdrawing his offer does not relieve him of the consequences of the withdrawal, which is, that the offer is terminated when the Bureau of Land Management receives the withdrawal.

An original letter is not needed to withdraw a lease offer. The requirements are that the withdrawal is properly filed and the person making the withdrawal is properly identified.

John J. Sexton (On Reconsideration), 20 IBLA 187 (May 7, 1975)

An application for assignment of an undivided partial interest in an oil and gas lease is properly approved by BLM effective the first day of the lease month following the date of filing of the application. In the interim between the filing of the application and the effective date of the assignment, the prospective assignor remains the sole lessee, and, as such, is the only person who may relinquish rights under the lease.

A document expressly relinquishing all rights to an oil and gas lease, signed by the sole lessee, may not be disregarded unless the lessee or one with clear authority to act on his behalf revokes the relinquishment in advance of its filing.

Sol Singer, Gretchen Capital, Ltd., 35 IBLA 361 (June 23, 1978)

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, despite a partial payment submitted on the basis of a partial relinquishment which is not yet effective.

An oil and gas lease may be relinquished only by the record title holder, and a partial relinquishment is

OIL AND GAS LEASES--Continued

RELINQUISHMENTS--Continued

not effective if it is filed by an applicant for an assignment which has not been approved.

Reichhold Energy Corp., 40 IBLA 134 (Mar. 29, 1979)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities will automatically terminate on the anniversary date of the lease upon failure of lessee to pay the minimum annual rental, despite a partial payment submitted on the basis of a partial relinquishment, which was ineffective because not filed by the record title holder pursuant to 43 CFR 3108.1, and despite issuance of a Bureau of Land Management decision subsequent to the anniversary date confirming a decreased annual rental.

E. J. Bradshaw, 44 IBLA 181 (Nov. 30, 1979)

RENEWALS

Where a 20-year oil and gas lease, committed to an approved unit agreement prior to the end of its initial term in 1962 and thereby extended beyond the original term, is eliminated from the unit agreement in 1972 and its term is automatically extended for 2 years and so long thereafter as oil or gas is produced in paying quantities, such a lease is not eligible for further 10-year renewals and an application for such a renewal filed in 1974 is properly rejected.

Marathon Oil Co., Chevron Oil Co., 19 IBLA 1 (Feb. 20, 1975)

When an assignment of an oil and gas lease, made prior to lease renewal, has been approved after renewal and thereafter it appears that there is a controversy whether the parties contemplated that the assignment of the base lease would extend to the renewal lease, the Department will not take action on a protest requesting rescission of the assignment approval, but will maintain the status quo for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

Joseph Alstad, 19 IBLA 104 (Mar. 4, 1975)

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee. Such lease is not held by production and terminates automatically on its final anniversary date notwithstanding the existence of a producing well on the leasehold.

Peacock Oil Co., Inc., Twin Arrow, Inc., 29 IBLA 74 (Feb. 23, 1977)

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee, pursuant to 43 CFR 3107.8-2; however, the language of the regulation is permissive and a delay in filing a renewal application may be excused in the presence of special circumstances.

Peacock Oil Co., Inc., Twin Arrow, Inc., 30 IBLA 103 (May 2, 1977)

OIL AND GAS LEASES--Continued

RENEWALS--Continued

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1976).

Anne Burnett Tandy et al., 33 IBLA 106 (Dec. 16, 1977)

Texaco, Inc., 33 IBLA 296 (Jan. 10, 1978)

Texaco, Inc., 40 IBLA 294 (Apr. 27, 1979)

To obtain a renewal of a 20-year oil and gas lease the lessee should file an application for renewal at least 90 days prior to the expiration of the lease term. However, this requirement is permissive and a delay in filing the application may be excused in the presence of special circumstances.

Homestake Oil and Gas Co., 40 IBLA 262 (Apr. 16, 1979)

RENTALS

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated where it is shown, upon reconsideration of an earlier Board decision, that lessee's failure to pay the rental timely was not due to a lack of reasonable diligence. Evidence which establishes that the payment due on May 1, 1974, at the Eastern States Office, Bureau of Land Management, Silver Spring, Maryland, was mailed in Dallas, Texas, on Apr. 25, 1974, 5 days before the due date, is sufficient to demonstrate due diligence despite the fact that the envelope containing the payment was postmarked Apr. 30, 1974.

W. A. Fitzhugh (On Reconsideration), 18 IBLA 323 (Jan. 6, 1975)

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Frank J. Germano, 18 IBLA 390 (Feb. 6, 1975)

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where it is not shown that the failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence. Mistake as to the date the payment is due, misplacement of the courtesy notice, and the decease of appellant's husband some 2 years prior to the date payment is due, do not afford a sufficient predicate for reinstatement of an oil and gas lease.

Mary A. Christopher, 19 IBLA 53 (Feb. 21, 1975)

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1), and to furnish a lease bond as required by 43 CFR 3104.1.

Duncan Miller, 19 IBLA 86 (Mar. 3, 1975)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease offer drawn first in a simultaneous filing is properly rejected under 43 CFR 3103.3-1 and 3111.1-1(e)(1) where the offer is deficient in the first year's rental by more than 10 percent. The amendment of the regulations to eliminate the requirement that the advance rental must be submitted with simultaneous filings, effective Sept. 17, 1973, was of prospective effect only, and may not be invoked to cure a defect in rental payment in a simultaneously filed lease offer pending on Sept. 17, 1973.

Duncan Miller, 19 IBLA 133 (Mar. 5, 1975)

Where the advance annual rental for an oil and gas lease was timely submitted by a personal check, but the check was erroneously dishonored by the drawee bank, the rental will be held to have been tendered when first received in the proper Bureau of Land Management office.

Donald S. Childs, 19 IBLA 240 (Mar. 26, 1975)

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Any oil and gas lease is automatically terminated by operation of law where an unsigned rental check is tendered prior to the anniversary date of the lease but is not signed and returned until after the anniversary date.

Richard V. Bowman, 19 IBLA 261 (Mar. 31, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessee shows that the failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence.

Ray E. Bush, 19 IBLA 280 (Apr. 7, 1975)

Margaret C. Rose, 19 IBLA 307 (Apr. 7, 1975)

Jimmy V. Bowling, 20 IBLA 146 (May 5, 1975)

An oil and gas lease terminated by operation of law for failure to pay the annual rentals on time may be reinstated where the lessee's delay in making payment was due to his seeking clarification of an illegible notice of payment sent by the Bureau of Land Management, and his action demonstrates his reliance on the notice.

Joseph E. Steger, 20 IBLA 206 (May 8, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance annual rental on time may be reinstated only when the lessee shows that his failure to pay the rental timely was either justifiable or not due to lack of reasonable diligence. The neglect of office personnel to follow appellant's instructions to make payments while he was away from his office on a combined business and vacation trip is not a predicate for either basis for relieve.

Charles C. Sturdevant, 20 IBLA 280 (May 22, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing by the lessee that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Failure to raise credible reasons that illness prevented timely payment, with no other justification for late payment, requires denial of reinstatement.

Mrs. Charles H. Blake, 20 IBLA 322 (June 6, 1975)

An oil and gas lease which has terminated by operation of law due to late payment of the annual rental may not be reinstated where the failure to pay on time was due to a lack of reasonable diligence. Where a payment is sent from a town in eastern Texas to Salt Lake City, Utah, on Oct. 30, and does not arrive until after Nov. 1, and where the Post Office indicates that regular mail sent that distance would not normally arrive in 2 days, the lessee has not exercised reasonable diligence.

William N. Cannon, 20 IBLA 361 (June 12, 1975)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted "apparent inefficiency of the United States Mails."

Mar-Win Development Co., 20 IBLA 383 (June 12, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing that failure to pay on or before the anniversary was either justifiable or not due to lack of reasonable diligence. Appellant's misinterpretation of the due date on the courtesy notice does not justify his late payment of the rent.

Norman E. Marker, 21 IBLA 144 (July 15, 1975)

Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent.

Wikoa, Inc., 22 IBLA 6 (Sept. 4, 1975)

Pauline V. Trigg, John H. Trigg, 31 IBLA 296 (July 22, 1977)

An oil and gas lease terminated by operation of law for failure to pay the advance rent on time may be reinstated only on a showing by the lessee that his failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. A failure to exercise reasonable diligence is justifiable when caused by a factor outside the control of the lessee. A lessee's personal illness does not justify late payment unless it is of such a debilitating nature that it actually prevents the lessee from posting payment. Appellant's ability to attend to other business shows that his illness did not prevent him from making timely payment of the rent.

Milan de Lany, 22 IBLA 47 (Sept. 16, 1975)

An oil and gas lease, terminated by operation of law for failure to make timely payment of the advance rental, may be reinstated only when the failure to make payment of the annual rental on or before the anniversary date was justifiable or not due to a lack of reasonable diligence. Mailing the rental payment from California to Montana the day before its due date does not constitute reasonable diligence.

Joseph Wachter, 22 IBLA 95 (Sept. 22, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only upon a showing that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Inability to pay the rent on time does not justify late payment.

Peter T. Creager, 22 IBLA 175 (Sept. 30, 1975)

The successful drawee in a drawing under the special simultaneous filing procedure for noncompetitive oil and gas lease offers is automatically disqualified if he fails to pay rental within 15 days from receipt of notice that such payment is due. A statement by such a drawee that he did not receive a notice and that his office records where his oil and gas records are contained lack any copy of the rental notice is insufficient to overcome the presumptive effect of evidence that Bureau of Land Management officials mail copies of the notice of rental, a notice of stipulations to be signed, and the stipulations in the same envelope, and it is clear the envelope containing the stipulations was received at the drawee's office.

A. G. Golden, 22 IBLA 261 (Oct. 24, 1975)

An oil and gas lease on which there is no well capable of production in paying quantities will terminate by operation of law if the annual rental payments are not submitted on or before the anniversary date. A well capable of production in paying quantities on the anniversary date is one which can actually produce enough oil to exceed the cost of its extraction. Neither the production of water nor the production of meager quantities of oil, albeit with hopes for paying production at some time in the future, constitute production in paying quantities on the anniversary date of the lease.

Where a lessee fails to pay the annual rental on or before the anniversary date, and where the lessee knew, or should have known, that the payment was due, estoppel will not operate to relieve the lessee of the consequent automatic termination of the lease.

The Polumbus Corp., 22 IBLA 270 (Oct. 30, 1975)

Where the deficiency in rental paid on or before the anniversary date of a lease is nominal and a notice of deficiency is sent to the lessee, the lease terminates by operation of law when the balance is not paid within 15 days from receipt of the notice or until the anniversary date, whichever is later.

No petition for reinstatement of an oil and gas lease terminated by operation of law, 30 U.S.C. § 188(b)

OIL AND GAS LEASES--Continued

RENTALS--Continued

(1970), may be entertained if the full amount of rental due was not paid within 20 days after the anniversary date of the lease.

Joseph Francis, 22 IBLA 277 (Oct. 30, 1975)

An oil and gas lease terminated by operation of law for failure to pay timely the advance rental may be reinstated only where the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. Past adherence to the requirement of timely payment does not justify a subsequent failure to make timely payment. Mailing a rental payment at Chicago, Illinois, to Salt Lake City, Utah, 1 day before the due date does not constitute reasonable diligence.

Henry Carter, 24 IBLA 70 (Feb. 24, 1976)

Where the advance rental check is received within 20 days after the anniversary date, the Bureau may deposit said check in an "unearned" account in order to preserve the right of the lessee to petition for reinstatement of the terminated lease and to safeguard the check, create a record of the payment, and bring it under accounting control. This does not signify acceptance of the payment, or indicate that the lease has not terminated, or create an estoppel against the Government.

John J. Nordhoff, Dean Kirk, 24 IBLA 73 (Feb. 24, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time cannot be reinstated when the petitioner fails to show that the late payment of rental was justifiable or not due to a lack of reasonable diligence. Loss of a checkbook through theft 5 days before the due date for payment does not establish causality sufficient to constitute a justifiable excuse.

John E. Stengel, 24 IBLA 98 (Feb. 25, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely may be reinstated only if the lessee shows by satisfactory evidence that the failure to pay the rental on or before the anniversary date was either justifiable or was not due to a lack of reasonable diligence. Allowing 1 day for the rental payment to reach Billings, Montana, from Eau Claire, Michigan, is not an exercise of reasonable diligence, and inability to pay is not a justifiable reason for failure to make timely payment.

Frank Thompson, 24 IBLA 105 (Mar. 1, 1976)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he/she fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his/her failure to do so cannot be excused because of the asserted delay of the postal service.

OIL AND GAS LEASES--Continued

RENTALS--Continued

John Paul Pratt, 24 IBLA 110 (Mar. 1, 1976)

Carma M. Pooley, 29 IBLA 304 (Mar. 30, 1977)

Jack Koegel, 30 IBLA 143 (May 12, 1977)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated when the lessee shows that its failure to pay the rental on or before the anniversary date was justifiable.

Great Basins Petroleum Co., 24 IBLA 117 (Mar. 1, 1976)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due. An attempt to make payment after the close of office hours on the day the payment is due will not prevent the disqualification.

W. Duane Kennedy, 24 IBLA 152 (Mar. 10, 1976)

The retention of the proceeds from a check, submitted as advance rental during the adjudication of an oil and gas lease offer, does not constitute the creation of a contract.

Robert L. Williams, 24 IBLA 311 (Apr. 20, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated when the lessee shows that his failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence.

An oil and gas lease, terminated because the advance rental was received 1 day after the due date, may be reinstated where it is shown that the lessee mailed the rental payment 3 days prior to the due date from the main post office in the same city where the BLM's field office is located and the postal authorities verify that there had been a delay in the processing of the mail at that particular time. Under these circumstances, the lessee will be considered to have mailed the payment with due diligence.

A. Helander, 25 IBLA 54 (May 18, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. Inadvertence of the lessee's employee in misplacing the courtesy notice does not justify late payment.

Samuel J. Testagrossa, 25 IBLA 64 (May 28, 1976)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time cannot be reinstated when the petitioner fails to show that the late payment was justifiable or not due to a lack of reasonable diligence. A payment that is late because it was inadvertently sent by the lessee to the wrong address is neither justifiable nor the result of reasonable diligence.

Frank H. Crosby, 25 IBLA 160 (June 14, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated where it is shown that lessee's failure to pay the rental timely was not due to a lack of reasonable diligence. Evidence which establishes that the payment due on Dec. 1, 1975, at the Eastern States Office, Bureau of Land Management, Silver Spring, Maryland, was delivered to a postal carrier on Nov. 11, 1975, is sufficient to demonstrate due diligence despite the fact that the envelope containing the payment was postmarked Dec. 8, 1975, and not received until Dec. 11, 1975, where a credible explanation of the delay has been furnished by the Post Office.

Paul D. Beaird, Jr., and Leon F. Scully, Jr., 26 IBLA 79 (July 13, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence. Late payment of the rental is not justified by confusion concerning proper processing of the rental payment which resulted when the duty to make payment was transferred from the company's land manager to its accountant.

Serio Exploration Co., 26 IBLA 106 (July 26, 1976)

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment is tendered at the proper office within 20 days of the due date.

Albert DiGiulio, Jr., Genuino J. Grande and Jeremy V. Cohen, 26 IBLA 169 (Aug. 4, 1976)

Apostolos Paliombeis, 30 IBLA 153 (May 16, 1977)

When an oil and gas lease offeror whose entry card was drawn first in a simultaneous drawing fails to pay the rental within 15 days after receiving notice that payment is due, he is automatically disqualified under 43 CFR 3112.4-1 from receiving the lease.

Frank De Jong, 26 IBLA 327 (Aug. 30, 1976)

Where, by prearrangement, as part of a business negotiation, a third party assumes responsibility for the payment of the annual rentals for two oil and gas leases which subsequently terminate by operation of law when the rental check is dishonored by the drawee bank, the leases will not be reinstated on the strength of the lessee's naked assertion that the uncollectability of the check was deliberately contrived as part of a scheme to deprive him of the lease so that the third party could be granted the leases unlawfully by a Federal employee.

Stanley J. Pirtle, 26 IBLA 348 (Sept. 7, 1976)

Where a noncompetitive oil and gas lease is canceled for failure of the lessee to make full payment of the first year's rental, the Department may return the rental pursuant to the repayment statute, 43 U.S.C. § 1374 (1970), in appropriate circumstances where the lessee has derived no benefit from the possession of the lease and there are no other factors militating against repayment.

Albert J. Piper, 27 IBLA 61 (Sept. 27, 1976)

Where part of the lands in an oil and gas lease are included within the known geologic structure of a producing oil or gas field, the annual rental rate will be increased for all of the land in the lease and a bond required.

H. E. Cabcon Investment Co., John Cakason, 27 IBLA 210 (Oct. 6, 1976)

Where the Bureau of Land Management sends notice to an offeror, pursuant to 43 CFR 3103.3-1, that the first year's rental accompanying an oil and gas lease offer is deficient in the amount of 41 cents, and that the deficiency must be paid within 30 days from notice under penalty of cancellation of the lease, the lease will be canceled where the lessee receives the notice, yet fails to pay.

Zona B. Jackson, 27 IBLA 217 (Oct. 6, 1976)

Where the Bureau of Land Management sends notice to an offeror at his record address, pursuant to 43 CFR 3103.3-1, that the first year's rental accompanying his noncompetitive oil and gas lease offer is deficient and such notice is returned to the Bureau marked "Unclaimed" by the post office, the cancellation of the lease will be set aside and the notice will not be considered to have been served on the offeror, pursuant to 43 CFR 1810.2(b), when the post office has failed to forward the notice in accordance with a request by the offeror to forward all mail and other mail has, in fact, been forwarded.

Jack R. Coombs, 28 IBLA 53 (Nov. 9, 1976)

An offeror is properly disqualified from receiving a noncompetitive oil and gas lease on an offer which is drawn first from a group of simultaneously filed offers when he fails to pay the first year's advance rental within 15 days of his receipt of notice that such rental is due, and the delay is attributable to his posting of the rental check with insufficient postage.

Edgar C. Bennington, Jr., 28 IBLA 65 (Nov. 10, 1976)

Where a lessee makes a deficient rental payment for his oil and gas lease claiming that such payment was determined in accordance with the rental or acreage figure stated in the lease, he will not be entitled to a Notice of Deficiency, pursuant to 43 CFR 3108.2-1, when it is shown that he received notice of an increase in

OIL AND GAS LEASES--Continued

RENTALS--Continued

the lease rental and, therefore, was not justified in relying on the original rental figure in the lease.

An oil and gas lease terminated by operation of law for failure to pay the full advance rental timely can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

Lone Star Producing Co., 28 IBLA 132 (Nov. 19, 1976)

Where the BLM deposits the advance rental tendered with the filing of an oil and gas lease offer, that action does not signify acceptance of the offer, nor does it create a contract to lease the land applied for, nor does it give rise to an estoppel against the Government.

Pinnacle Mining and Exploration Co., Inc., 28 IBLA 249 (Dec. 20, 1976)

There is no basis for reinstating an oil and gas lease, terminated for failure to pay rental timely, because of alleged reasonable diligence when the payment was mailed no earlier than the date the rental was due.

An oil and gas lease terminated for failure to pay rental timely may not be reinstated where the delay in paying the rental was not "justifiable" within the meaning of the Mineral Leasing Act, 30 U.S.C. § 188(c) (1970), because it was due to financial and other difficulties not within the contemplation of the Act.

Dolores B. Meggie, 28 IBLA 272 (Dec. 20, 1976)

An oil and gas lease, terminated by operation of law for failure to pay timely the advance rental, will not be reinstated where the sole reason offered as justification for the tardy payment is the confusion and business disruption which attended the remodeling of the corporate lessee's office space. Employee neglect or inadvertence likewise will not serve as justification.

Mono Power Co., 28 IBLA 289 (Dec. 27, 1976)

Where, after a drawing of simultaneously filed oil and gas lease offers, the authorized officer mails a notice to the successful drawee informing him of his priority and the requirement that the advance rental must be paid within the allotted time, which letter is received at his address of record, his subsequent failure to remit the rental timely will disqualify his offer even though he asserts that the person who received and signed for the notice, and then failed to give it to him promptly, was not his designated agent for receipt of mail.

After a drawing of simultaneously filed oil and gas lease offers the requirement that the first year's rental be received in the proper office within the allotted time after notice to the applicant is mandatory, and consideration of excuses for failure to comply is not permitted. Specifically, no relief will be afforded where the delay is attributed to the Postal Service.

Edgar C. Bennington (On Reconsideration), 28 IBLA 355 (Jan. 31, 1977)

OIL AND GAS LEASES--Continued

RENTALS--Continued

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970) on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), he cannot obtain the extension.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date.

Raymond N. Joeckel, 29 IBLA 170 (Mar. 14, 1977)

Milton J. Letsack, 29 IBLA 316 (Mar. 30, 1977)

Doris B. Sterkel, Richard L. Sterkel, 30 IBLA 35 (Apr. 12, 1977)

K C Exploration, Inc., 30 IBLA 209 (May 20, 1977)

Francis L. Hill, 32 IBLA 202 (Sept. 16, 1977)

Thomas G. Fails et al., 32 IBLA 302 (Sept. 30, 1977)

A late payment of rental due for an oil and gas lease results in termination of the lease, and the lease will not be reinstated, where the lessee relied upon a third party to pay the rental, but no acceptable justification is shown for the delay.

Lynn Schusterman, 29 IBLA 182 (Mar. 18, 1977)

When an oil and gas lease is in royalty status and acreage containing the well is segregated into a new lease by approval of an assignment, the nonproductive base lease does not terminate for failure to pay rental timely if the Bureau of Land Management does not inform the lessee of the segregation until after the anniversary date of the lease.

Odessa Natural Corp., 30 IBLA 26 (Apr. 11, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Raymond N. Joeckel et al., 30 IBLA 32 (Apr. 11, 1977)

Karen Cotter et al., 30 IBLA 68 (Apr. 27, 1977)

Duncan Miller, 30 IBLA 90 (Apr. 27, 1977)

William C. Kirkwood, 31 IBLA 178 (July 5, 1977)

Duncan Miller, 31 IBLA 349 (July 22, 1977)

Fred Goodstein, 32 IBLA 25 (Aug. 31, 1977)

Continued--

OIL AND GAS LEASES--Continued

RENTALS--Continued

Jerry Chambers, 33 IBLA 323 (Jan. 16, 1978)

An oil and gas lease is not *issued* until it is signed by the authorized officer; the acceptance of first year's rental in advance as required by regulation does not create a lease contract. Until lease issuance, the Secretary retains his discretion to lease or not to lease a given tract.

James W. Canon et al., 1 SEC. 1 (Apr. 15, 1977)
84 I.D. 176

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date.

Jerry J. Hunnicutt et al., 30 IBLA 86 (Apr. 27, 1977)

Where a noncompetitive oil and gas lease is canceled for having been erroneously issued because the lands involved were part of an incorporated city (43 CFR 3101.1-1(a)(3) the Department may return the rentals pursuant to the repayment statute, 43 U.S.C. § 1374 (1970), in appropriate circumstances where the lessees have derived no benefit from the possession of the lease and there are no other factors militating against repayment.

Bruce Anderson, 30 IBLA 118 (May 2, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued pursuant to the simultaneous filing procedures where the drawing was held prior to the effective date of the rent increase, and leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Casey C. Jansen et al., 30 IBLA 134 (May 12, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued to successful offerors at simultaneous drawings held prior to the effective date of the rate increase.

Melvin B. Hobgood, 30 IBLA 163 (May 18, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee who mails payment from New York City to Cheyenne, Wyoming, 2 days before the anniversary date is not reasonably diligent.

Rosemary Weaver et al., 30 IBLA 227 (May 26, 1977)

OIL AND GAS LEASES--Continued

RENTALS--Continued

The lessee of an acquired lands oil and gas lease issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), the lease must be deemed to have terminated at the end of its stated term.

Shell Oil Co., 30 IBLA 290 (June 1, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn prior to the effective date of the increase.

Doris A. Fiel et al., 30 IBLA 308 (June 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date.

Guy B. Willis, 30 IBLA 344 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

Wanda C. and William B. Schmidt, et al., 30 IBLA 346 (June 8, 1977)

William S. Schichtanz, 32 IBLA 20 (Aug. 31, 1977)

Vern K. Jones et al., Esdras K. Hartley, 33 IBLA 74 (Dec. 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate applies to all leases issued after that date, regardless of the date the offer to lease or drawing entry card was filed.

Duncan Miller, 30 IBLA 350 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offer was filed prior to the date of the regulation. The imposition of the increased rate is not discriminatory as it applies to all leases issued after a certain date.

Guy B. Willis, 30 IBLA 373 (June 10, 1977)

OIL AND GAS LEASES--Continued

RENTALS--Continued

The filing of a noncompetitive oil and gas lease offer, prior to acceptance, does not create any right to a lease or legal interest which restricts the discretionary authority of the Secretary of the Interior over lease issuance. Thus, an amended regulation raising the lease rental charge may be applied to lease offers which have been previously filed but not accepted and such action is not violative of the Fifth Amendment.

Barbara A. Joeckel, 30 IBLA 376 (June 10, 1977)

A simultaneous oil and gas offeror is properly disqualified under 43 CFR 3112.4-1 from receiving lease when she fails to pay the first year's rental within 15 days of receipt of the notice that such payment is due.

Where the check submitted in payment of the first year's rental for an oil and gas lease offer is dishonored by the drawee bank due to error on the part of the drawer, the offer is properly rejected in accordance with 43 CFR 3112.4-1.

Karen L. Brown, 31 IBLA 239 (July 12, 1977)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

Duncan Miller, 31 IBLA 371 (Aug. 4, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to over-the-counter filing procedures, even though the lease offers were submitted prior to the effective date of the increase.

Brad J. Bays, 31 IBLA 374 (Aug. 5, 1977)

Cecil C. Wall, 32 IBLA 27 (Aug. 31, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Altex Oil Corp., 32 IBLA 18 (Aug. 31, 1977)

Altex Oil Co., 32 IBLA 44 (Sept. 2, 1977)

Altex Oil Corp., 32 IBLA 390 (Nov. 7, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date pursuant to over-the-counter offers or pursuant to the simultaneous filing procedures, even though the offers or entry cards were filed with BLM prior to the specified date.

Bureau of Land Management Instruction Memorandum No. 77-37 outlined a general policy for the assessment of additional rental on oil and gas lease offers pending when the rental rate was increased by regulation, but left to the discretion of the State Offices the particular implementing procedures. Procedures used by a State Office which may be different from other State

Offices, but which do not prejudice the offerors' right to receive oil and gas leases if leases are issued on the lands applied for, are not arbitrary and capricious as to require reversal of the decisions assessing additional rental.

Assuming, *arguendo*, the applicability of the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970), to an amendment of 43 CFR 3102.3-2 increasing the rental rate of noncompetitive oil and gas leases, the provisions of the Act were satisfied where the proposed increase was published as proposed rulemaking on Mar. 18, 1976, to be effective July 1, 1976, and final rulemaking was published Jan. 5, 1977, changing the effective date of the rental increase to Feb. 1, 1977.

E. R. Gaither et al., 32 IBLA 106 (Sept. 12, 1977)

The filing of an application for a noncompetitive oil and gas lease, prior to acceptance, does not create a right to a lease immune from application of a subsequently amended administrative regulation. An increased rental rate is properly applied to an oil and gas lease offer pending before the effective date of the rate change but which has not been accepted prior to that time.

Viola J. Kirkwood, 32 IBLA 199 (Sept. 16, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date. The filing of an application for a lease prior to its acceptance does not create a right to a lease which is immune from application of a subsequently amended administrative regulation, nor does administrative delay in the processing of the lease offer preclude proper application of such regulation.

Paul C. Kohlman, 32 IBLA 240 (Sept. 21, 1977)

Increased per acre rental, as directed under Jan. 5, 1977, revision of 43 CFR 3103.3-2(a), is applicable to all noncompetitive oil and gas leases issued after Feb. 1, 1977, including leases for which offers, both simultaneous and over-the-counter, were filed prior to revision of the regulation.

Duncan Miller et al., 32 IBLA 289 (Sept. 27, 1977)

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse for reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record resulting in the lessee not receiving the courtesy notice does not relieve the lessee from the obligation to pay rental timely.

Richard C. Corbyn, 32 IBLA 296 (Sept. 28, 1977)

The oil and gas lessee of record is responsible for paying rental timely and for meeting the reinstatement requirements. The fact that a lessee attempts to assign his lease does not absolve him of the rental and

OIL AND GAS LEASES--Continued

RENTALS--Continued

reinstatement requirements until the assignment is approved by the Bureau of Land Management.

Leonard A. J. Tancredi, 32 IBLA 325 (Oct. 11, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Where the Bureau of Land Management issued a decision notifying a successful lease offeror of the increased advanced rental rate from $.50 to $1 per acre as per the regulation change in 43 CFR 3103.3-2, effective Feb. 1, 1977, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board and upon our affirmation, appellant now will be given 15 days to comply with the original requirements before his offer is rejected.

Paul Landis, 32 IBLA 374 (Oct. 31, 1977)

Where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously filed offers and the lessee's personal check in payment of the first year's rental is returned by the drawee bank as uncollectible, a decision canceling the lease will be affirmed in the absence of a showing of error on the part of the bank.

Norman Monath, 32 IBLA 392 (Nov. 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to an over-the-counter offer filed prior to the specified date.

Dean W. Rowell, 33 IBLA 30 (Nov. 22, 1977)

Where the Bureau of Land Management issued a decision notifying a successful drawee in the simultaneous oil and gas filing program of the increased advance rental rate from 50 cents to $1 per acre pursuant to a regulation change effective Feb. 1, 1977, 43 CFR 3103.3-2, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board. Payment of the required increased rental during the appeal period is deemed timely and a lease may issue.

George Gabriel, 33 IBLA 44 (Nov. 25, 1977)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Congress has provided that failure to pay annual rental timely for an oil and gas lease shall cause the lease to terminate automatically by operation of law under 30 U.S.C. § 188(b) (1970). An oil and gas lease is not deemed to have terminated for failure to pay rental timely where, because of misleading communications from the Geological Survey and the Bureau of Land Management, it appeared the lease was in a royalty status and the lessee did not have reason to know that the rental was due.

Davis Oil Co. et al., 33 IBLA 53 (Nov. 25, 1977)

The timeliness of filing Federal tax returns and payments and of making rental payments for Federal oil and gas leases are governed by different statutes and regulations and are not the same. Receipt in the proper Bureau of Land Management office determines the timeliness of rental payment, whereas the Internal Revenue Service uses a postmark date. The postmark date is relevant in considering a Federal oil and gas lease rental only to determine if the lessee exercised reasonable diligence so as to warrant reinstatement of a lease terminated for failure to pay the rental timely.

In determining whether an oil and gas lessee exercised reasonable diligence to warrant reinstatement of a terminated lease the postmark date on the rental payment envelope is generally deemed the date of mailing unless there is satisfactory evidence to support an assertion that mailing occurred at an earlier date.

Generally, the mailing of a rental payment for an oil and gas lease 1 day before the payment date cannot be considered reasonable diligence to warrant reinstatement of a terminated lease.

Receiving the Bureau of Land Management's courtesy rental due notice too late to meet a lessee's usual business practice for mailing checks is not a justifiable excuse for delay in transmitting the payment to warrant reinstatement of a terminated lease.

The inadvertent or negligent failure of an employee or other person entrusted to mail payments for an oil and gas lessee is not a justifiable excuse for delay in transmitting the payment to warrant reinstatement of a terminated lease. Nor is the fact his prior payments have been timely filed such an excuse.

David R. Smith and Darla L. Smith, 33 IBLA 63 (Dec. 5, 1977)

Where an oil and gas lease is canceled in part because it was erroneously issued as to that part, there is no authority for the Department to pay to the lessee unrealized anticipated profits or to refund the rental for the portion of the lands retained in the lease. By signing the simultaneous oil and gas drawing card, the offeror agreed to accept a lease for those portions of the tract found by BLM to be available for leasing.

Paul N. Temple, 33 IBLA 98 (Dec. 16, 1977)

An oil and gas lease which is in rental status terminates when the annual advance rental is not properly received in the State Office by the anniversary date of the lease.

Doris Belnar, 33 IBLA 231 (Dec. 28, 1977)

30 U.S.C. § 188(b) (1970), and its implementing regulation 43 CFR 3108.2-1, requiring a notice of deficiency on a form approved by the director apply only to rental payments due on the anniversary dates of noncompetitive oil and gas leases, and are inapplicable to deficient initial rental payments for noncompetitive oil and gas lease offers.

Where the Bureau of Land Management notifies an oil and gas lessee of a deficiency in initial rental and the deficiency is not paid to the Bureau within the time prescribed, but is paid some 5 months later, the delay being ascribed to "oversight" the lateness of the payment will not be excused and the cancellation of the lease for failure to pay the rental timely is properly sustained.

Evelyn Chambers, 33 IBLA 271 (Jan. 5, 1978)

A successful offeror in a BLM simultaneous filing procedure who fails to pay the first year's advance rental within 15 days from the receipt of notice that such payment is due will be disqualified as an offeror.

When BLM sends a notice of an advance rental obligation to the address of record of a successful offeror in a simultaneously filed oil and gas lease drawing and such notice is returned by the post office, the offeror is properly deemed to have "receipt of notice" under 43 CFR 1810.2.

An undocumented and unsupported assertion by an oil and gas lease offeror that his agents made a timely tender of advance rental payment will be disregarded on appeal where BLM records indicate that no such tender was made within the period allowed for payment of the advance rental.

Charles M. Brady, 33 IBLA 375 (Jan. 25, 1978)

Sec. 31 of the Mineral Leasing Act, *as amended*, 30 U.S.C. § 188 (1970), providing for the automatic termination of a lease, not containing a well capable of production of oil and gas in paying quantities, for nonpayment of the annual rental, does apply to a lease which is entitled to an extension beyond its initial 10-year term because of termination of an approved communitization agreement under 30 U.S.C. § 226(j) (1970), even though notice of the extension was not given to the lessee in time for him to receive it and return the rental so that the payment would be received by BLM no later than the 11th anniversary date of the lease.

Jack L. McClellan, Marton Majoros, 34 IBLA 53 (Feb. 16, 1978)

Payment of the annual rental on an oil and gas lease is not made until a proper form of remittance is received by the appropriate office of the Bureau of Land Management.

Lloyd M. and Adelheid A. Patterson, 34 IBLA 68 (Feb. 22, 1978)

A check tendered prior to the due date of an oil and gas lease annual rental payment, which is properly dishonored by the drawee bank, does not constitute timely payment. But where return of the check results from a confirmed bank error, subsequent collection and payment of the check relates back to the time of the original tender, and payment is timely.

Annual rental payments on oil and gas leases are sent to depositories designated by the Secretary of the Treasury if their location permits the deposit to be hand carried; otherwise, the deposits are mailed to the Denver Branch of the Kansas City Federal Reserve Bank. Washington, D.C., offices of the Bureau of Land Management may send deposits to the Cash Division of the Treasury Department. All checks drawn on foreign banks or foreign branches of United States banks must be sent for deposit to the Cash Division of the Treasury Department.

An oil and gas lease rental payment check returned to the Bureau of Land Management because a Federal Reserve Bank will not accept for collection checks drawn on foreign banks, but which could be collected through the Cash Division of the Treasury Department and would be honored by the drawee bank, is not "uncollectible."

Pipeline Petroleum Corp., 34 IBLA 73 (Feb. 22, 1978)
85 I.D. 70

When rental payment for an oil and gas lease is mailed after the date it is due, there can be no basis for reinstating the lease because of reasonable diligence.

A lessee's failure to make timely payment of annual rental on an oil and gas lease is not justified because it results from his misplacing the courtesy notice that rental is due.

Where a lessee presents no evidence that illnesses of his family members were so disruptive as to prevent him from carrying on his employment and other routine activities as usual, the late payment of rental on an oil and gas lease is not justified by these illnesses.

Albert B. Fairfield, 34 IBLA 132 (Mar. 8, 1978)

An oil and gas lessee of record is responsible for paying rental timely. The fact that a lessee attempts to assign his lease does not absolve him of the rental payment requirements until the assignment is approved by the Bureau of Land Management.

Auburn C. Hunsucker, 34 IBLA 316 (Apr. 24, 1978)

When BLM adjudicates issue and offeror does not appeal, doctrine of administrative finality, which is administrative counterpart of res judicata, generally bars consideration of new appeal arising from later proceeding involving same lease and same issue. Accordingly, BLM acted properly in dismissing appellant's protest, filed Nov. 18, 1977, against oil and gas lease annual rental adjudicated on July 27, 1977.

Wilfred Plomis, 35 IBLA 1 (May 3, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Tipperary Oil and Gas Corp., 35 IBLA 120 (May 15, 1978)

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse upon which to predicate reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record resulting in the lessee not receiving the courtesy notice does not

OIL AND GAS LEASES--Continued

RENTALS--Continued

relieve the lessee from the obligation to pay rental timely.

Apostolos Paliombeis, 35 IBLA 180 (May 23, 1978)

"Payment." Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering his leases, and, until such time as it is received, no "payment" of annual rental has occurred. Accordingly, where a check is mailed prior to the due date but does not arrive until more than 20 days after this due date, no "payment" was made prior to that time, so that the lease automatically terminated by operation of law, and the Department is without authority to consider a petition for reinstatement of the lease.

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental, within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when he submits payment to the BLM office administering his leases, and when BLM has the opportunity either to receive or decline it. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for reinstatement of an oil and gas lease terminated for failure to make timely payment of annual rental.

Mobil Oil Corp., 35 IBLA 265 (June 2, 1978)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification may not be avoided by allegations that delivery was delayed by the postal service, as the rule is that the postal authorities are the agents of the sender in such cases.

Where BLM records show that the first-drawn applicant for an oil and gas lease paid his rental 1 day late, and is therefore disqualified, there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Where a first-drawn oil and gas applicant offers evidence to show that his first year's advance rental was mailed sufficiently in advance so that, even if delayed, it would have arrived within the prescribed time, a legal presumption is raised that the payment was timely delivered.

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches *eo instante*.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

It is the responsibility of a lessee to see that any payment tendered for annual rental under an oil and gas lease is so identified that the appropriate State office can credit the payment to the proper lease account. However, where an appellant demonstrates that the rental money was received timely by the appropriate State Office, and the evidence indicates that the lessee subsequently gave timely and proper instructions

OIL AND GAS LEASES--Continued

RENTALS--Continued

as to its application, the lease is properly deemed to have not terminated.

Pacific Transmission Supply Co., 35 IBLA 297 (June 2, 1978)

An oil and gas lease terminates automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank on which it is drawn. However, if a lessee provides adequate evidence, such as an admission by a bank official, that the bank erroneously dishonored the check, the error of the bank may not vitiate the otherwise proper payment of rental to BLM.

An oil and gas lease terminated for nonpayment of rent may be reinstated under 30 U.S.C. § 188(c) (1970) if the failure to pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Where a lessee files his rental check timely, but the check is nonnegotiable because insufficient funds are on deposit in the particular bank, the lessee has not exercised reasonable diligence. Failure to pay rental timely may be justifiable where it is caused by factors outside the lessee's control which were the proximate cause of the failure. Where the lessee provides no evidence or circumstances of an alleged unaccountable delay in the electronic transfer of funds from one bank to another which resulted in the lessee's rental check being dishonored, there is no basis for reinstatement of the lease.

Don C. Wiley, 35 IBLA 302 (June 2, 1978)

An oil and gas offer which is accompanied by advance rental of $0.50 per acre may not be rejected as not including sufficient advance rental, per 43 CFR 3102.3-2, 3111.1-1(d) and (e)(1), if the regulation raising the rental to $1 is not in effect when the offer was filed.

Mobil Oil Corp., 35 IBLA 375 (June 23, 1978)
85 I.D. 225

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse requiring reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record which results in the courtesy notice's arriving late does not relieve the lessee from the obligation to pay rental timely.

Gilbert Mark Castillo, 36 IBLA 32 (June 27, 1978)

In the absence of joint lessees establishing the existence of a prior agreement that a particular lessee was responsible for payment of the oil and gas lease rental, the failure of the joint lessees to pay the rental timely is a joint failure and the joint lessees must each satisfy the reinstatement requirements of 30 U.S.C. § 188(c) (1970). In the absence of reasonable diligence, the lease cannot be reinstated unless each joint lessee can show that he has a justifiable excuse for failing to pay the rental timely.

Frederick C. Farrington, George F. Hoffman, 36 IBLA 70 (June 30, 1978)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease which has terminated for failure to pay rental timely may be reinstated upon a satisfactory showing that, among other things, the failure to pay the rental on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. Generally, mailing the payment the day before it is due does not constitute reasonable diligence. A prolonged business trip will generally not constitute a justifiable excuse for the late payment.

J. R. Oil Corp., 36 IBLA 81 (July 12, 1978)

The automatic termination provision in sec. 31 of the Mineral Leasing Act, *as amended*, does not apply to a situation where, due to other contingencies, additional rental may become due on a date other than the anniversary date of a lease.

American Resources Management Corp., 36 IBLA 157 (July 31, 1978)

Where the official record of an oil and gas lease offer contains no indication either of when BLM received payment of first-year rental on the lease or of when BLM believes it received this payment, and where the only indication of when the payment was made is a photocopy, submitted on appeal, of a portion of an unidentified, undated receipt which does not bear either the offeror's name or the serial number of his offer or the control number of the document, and which is not included in the official record, BLM's decision rejecting the offer under 43 CFR 3112.4-1 for failure to make this payment within 15 days of the offeror's receipt of notice that the rental was due will be reversed.

Willis L. Lawson, 36 IBLA 178 (July 31, 1978)

A successful offeror in a BLM simultaneous filing procedure who fails to pay the first year's advance rental within 15 days from the receipt of notice that such payment is due is properly disqualified as an offeror.

Gavino San Diego, 36 IBLA 300 (Aug. 21, 1978)

An oil and gas lessee is properly required to pay the higher rental prescribed by duly promulgated regulations of the Department where all or part of the lands in the lease have been included within the known geologic structure of a producing oil or gas field. However, where a discovery is made on the leased lands, at the expiration of that lease year the lease goes on a minimum royalty basis. 43 CFR 3103.3-5.

Andrew W. Brainerd, 36 IBLA 304 (Aug. 21, 1978)

An oil and gas lease terminated by operation of law for failure to pay advance rental timely will be reinstated when lessee shows that failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence in that payment was mailed in California 6 days before due in Wyoming State Office.

Mercedes M. Peratt, 36 IBLA 331 (Aug. 28, 1978)

OIL AND GAS LEASES--Continued

RENTALS--Continued

A rental check for an oil and gas offer need not be signed necessarily by the offeror.

Lillian Sweet, 37 IBLA 25 (Sept. 14, 1978)

Where BLM sends by certified mail a notice to an offeror at his record address, pursuant to 43 CFR 3102.3-1, that the first year's rental is due within 15 days of receipt of the notice, and the letter is returned to BLM marked "moved left no address" by the post office, and it is established that the nondelivery by the post office was erroneous, the rejection of the lease offer will be set aside and the notice will not be considered to have been served on the offeror pursuant to 43 CFR 1810.2(b).

Joan L. Harris and Jonathan T. Ames, 37 IBLA 96 (Sept. 25, 1978)

The rent for oil and gas lease rights obtained in a simultaneous oil and gas lease drawing must be received in the proper office of the Bureau of Land Management within 15 days from the date of receipt of notice that such payment is due. Where there is no proof that service of the notice that payment is due was made upon offeror more than 15 days before the payment is received by the proper office of BLM, such payment will be deemed as timely made.

Kathleen A. Rubenstein, 37 IBLA 117 (Sept. 29, 1978)

A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law and not by the action of any official if the annual rental is not paid on or before the due date. Submission of a rental check without identifying the lease number precluded the Bureau of Land Management from accepting the check as payment for the lease, and a lease is properly held to terminate in the absence of a timely identified payment of the rental.

S. Delos Champaign, 37 IBLA 377 (Nov. 6, 1978)

"Reasonable diligence." Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the Bureau of Land Management and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. § 188(c) (1976) because there has been reasonable diligence on the part of lessee.

Lillie Belle Higgins, 38 IBLA 254 (Dec. 8, 1978)

A lessee's forgetfulness and inadvertence are not justifiable excuses for failure to pay the annual rental on or before the anniversary date of the oil and gas lease. Nor does mailing payment 4 days after the due date constitute reasonable diligence. The timeliness of filing Federal tax returns and payments and of making rental payments on oil and gas leases are governed by different statutes and regulations and are not the same.

Fred Burcheck, 38 IBLA 275 (Dec. 13, 1978)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where an offer is drawn No. 1 for a tract consisting of 39.97 acres, BLM requests payment specifically of $40 advance rental, and the offeror remits $39.97 within the 15-day period spelled out in 43 CFR 3112.4-1, the submittal of $39.97 does not constitute satisfactory payment within the ambit of that regulation.

Milton Knoll, 38 IBLA 319 (Dec. 19, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after Feb. 1977, the increased rate is applicable to leases issued subsequent to that date where the over-the-counter offer was filed prior to effective date of the regulation.

Phillips Petroleum Co., 38 IBLA 344 (Dec. 22, 1978)

BLM does not waive its right to declare a lease expired by cashing an advance annual rental check and placing funds in an unearned account.

Richard P. Smoot, 39 IBLA 1 (Jan. 8, 1979)

A noncompetitive oil and gas lease offer for acquired lands, filed "over-the-counter," is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, where the balance of the rental is tendered with the notice of appeal, the offer may be reinstated with priority from the date the deficiency was corrected.

George S. Swan, 39 IBLA 47 (Jan. 16, 1979)

An oil and gas lease which has terminated by operation of law due to late payment of annual rental will not be reinstated where it appears that the rental payment was not mailed early enough to account for the normal delays in the transmission of the mail.

Reynolds Mining Corp., 39 IBLA 405 (Mar. 2, 1979)

An oil and gas lease issued on July 1, 1951, is not controlled by P.L. 83-555, effective July 29, 1954, and the lease therefore does not terminate automatically by operation of law if annual rental is not paid timely, as this law does not apply retroactively to the lease in the absence of written notice from the lessees that they have elected to subject their lease to this law. Rather, the mineral leasing law in effect prior to July 29, 1954, controls, under which the lessees' failure to pay annual rental subjects the lease to cancellation only after BLM gives them 30 days' notice of their failure to pay the rental timely. BLM's decision canceling such lease will be vacated where it did not give the lessees the required notice.

Allied Chemical Corp., et al., 40 IBLA 272 (Apr. 18, 1979)

Under 43 CFR 3112.4-1, a successful drawee who fails to submit the first year's advance rental within 15 days of his receipt of notice that it is due is automatically disqualified to receive the lease.

Donald E. Jordan (Supp.), 41 IBLA 60 (May 31, 1979)

OIL AND GAS LEASES--Continued

RENTALS--Continued

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification, stemming from failure to pay timely, will not be avoided by allegations that payment was mailed far enough in advance to arrive at BLM timely.

American Petrofina Co. of Texas, 41 IBLA 126 (June 13, 1979)

Where the rental payment accompanying a noncompetitive oil and gas lease offer for acquired lands, filed over-the-counter, is deficient by more than 10 percent due to an increase in the rental rate subsequent to the filing of the offer, and Bureau of Land Management requests submission of the deficient rental within 30 days, BLM may properly reject the lease offer when the additional rental is not submitted within the 30 days.

Hansen Brothers, 42 IBLA 40 (July 31, 1979)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental the day it is due does not constitute reasonable diligence.

Where a lessee presents no evidence that illness of a family member or a heavy work load were so disruptive as to prevent him from carrying on his other routine activities as usual, the late payment of rental on an oil and gas lease is not justified by the illness or the work.

Victor Holz, 42 IBLA 284 (Aug. 27, 1979)

Reliance on receipt of a courtesy billing notice from BLM is not a justifiable excuse upon which to predicate reinstatement of an oil and gas lease terminated for failure to pay rental timely. The fact that the courtesy rental notice was delayed in reaching appellant because it was sent to appellant's former address is not a justifiable excuse for late payment.

William E. Steiskal, 42 IBLA 304 (Aug. 27, 1979)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is $1,955, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for $1,954 within the time required, but fails to submit the $1 deficiency within the allowed time.

C. Ennos, 42 IBLA 326 (Aug. 30, 1979)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where the failure to pay rental on or before the anniversary date of a lease is attributable to a breakdown in mailing procedures within the parent company of the lessee, neither reasonable diligence nor justification is shown to support a petition for reinstatement.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2) (1977).

Fuel Resources Development Co., 43 IBLA 19 (Sept. 11, 1979)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment.

When rental payment for an oil and gas lease is mailed after the date it is due, there can be no basis for reinstating the lease because of reasonable diligence.

When appellant's failure to mail his rental payment timely is caused by carelessness or inadvertance, his petition for reinstatement of an oil and gas lease is properly denied.

James E. Kordosky and Robert A. Weiss, 43 IBLA 63 (Sept. 18, 1979)

Where BLM sends by certified mail a request for payment of advance rental to the address of record of a successful offeror in a simultaneously filed oil and gas lease drawing and such request is returned by the Post Office, marked "Moved, left no address," the offeror is properly deemed to have "receipt of notice" under 43 CFR 1810.2. Where the address of record of the offeror is that of a leasing service and the leasing service moves, filing a change of address form with the Post Office in the name of the leasing service, but not in the name of appellant, the Post Office properly returned the notice addressed to the offeror to BLM.

A successful offeror in a BLM simultaneous filing procedure who fails to pay the first year's advance rental within 15 days from the receipt of notice that such payment is due will be disqualified as an offeror.

Roy Lindgren, 43 IBLA 139 (Sept. 28, 1979)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease, terminated automatically by operation of law for failure to pay rental timely, may be reinstated if, among other matters, the failure to pay timely was justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When rental payment for an oil and gas lease is mailed after the date it is due, generally there can be no basis for reinstating the lease because of reasonable diligence.

The burden of showing that late payment of annual rental for an oil and gas lease is justifiable is on the lessee. An assertion of personal reasons without further explanation, is insufficient to meet this burden. Nor does reliance on receipt of a courtesy notice justify failure to pay rental timely.

William A. King, 43 IBLA 255 (Oct. 10, 1979)

It is not the transfer of the lease account between the Bureau of Land Management and the Geological Survey which determines the rental amount; rather it is the status of the lease that determines which agency maintains the account and what rental applies.

Marathon Oil Co., Union Oil Co. of California, 43 IBLA 309 (Oct. 22, 1979)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal and delivery of the payment.

Bureau of Land Management's cashing a late rental check and depositing it in its unearned account does not constitute acceptance of rental payment or a determination that a terminated oil and gas lease will be reinstated.

Eugene E. and Allienne A. Jankoski, 43 IBLA 323 (Oct. 29, 1979)

Where BLM sends by certified mail a request for payment of advance rental to the address of record of a successful offeror in a simultaneously filed oil and gas lease drawing and such notice is returned by the Post Office, marked "Moved, left no address," the offeror is properly deemed to have "receipt of notice" under 43 CFR 1810.2, where the offeror's address of record is that of a leasing service and the leasing service moves, filing a change of address form with the Post Office in the name of the leasing service, but not in the name of appellant.

A successful offeror in a BLM simultaneous filing procedure who fails to pay the first year's advance rental within 15 days from the receipt of notice that such payment is due will be disqualified as an offeror.

Clyde K. Rohrman, 43 IBLA 370 (Oct. 29, 1979)

OIL AND GAS LEASES--Continued

RENTALS--Continued

When, following a drawing of simultaneously filed oil and gas lease offers, BLM notifies the first-drawn offeror to submit the first year's rental, that payment must be received by the proper office within the prescribed 15 days. An unsigned check, though received timely, does not constitute acceptable payment and is properly returned by BLM to the offeror. Where the offeror does not thereafter submit acceptable payment within the 15 days, BLM properly disqualifies the lease offer.

Delay caused by or attributable to the U.S. Postal Service is not sufficient to excuse late payment of rental except where reinstatement of a lease is at issue under 30 U.S.C. § 188(c) (1976). When BLM returns unacceptable payment to the offeror, a charge that delay in the return of the payment by the Postal Service caused his or her subsequent late rental payment is also an insufficient excuse absent evidence that the Postal Service acted improperly. There is a legal presumption of regularity which supports the official acts of public officers, and in the absence of clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Gary Milske, 44 IBLA 21 (Nov. 6, 1979)

Where a successful drawee demonstrates on appeal that his first year's advance rental was timely received by BLM, but that BLM erroneously failed to credit his remittance and rejected his offer, the case will be remanded to the State Office of BLM with instructions to issue the lease to the successful drawee, all else being regular.

Vincent F. Duncan, 44 IBLA 42 (Nov. 6, 1979)

A check is a valid form of remittance for payment of an oil and gas lease filing fee and advance rental. However, it is subject to collection and final payment without cost to the Government. Where a check is returned from a bank as uncollectible, generally, the check cannot be considered as a proper tender of payment.

A check returned from a bank may be considered a tender of payment where the return of the check is shown to have resulted from a confirmed bank error, and the subsequent collection and payment of the check relates back to the time it was originally tendered to BLM. If an oil and gas lease has been canceled and applications rejected because checks have been returned from a bank and the appellant shows bank error, the case is remanded for further consideration.

Jose V. Lim, 44 IBLA 96 (Nov. 20, 1979)

An oil and gas lease in its extended term because of the termination of an approved unit plan to which it was committed, on which lease there is no well capable of production in paying quantities, terminates automatically by operation of law where the annual rental is not paid on or before the anniversary date of the lease. The pendency of an appeal regarding the termination date of the extension does not excuse the failure to maintain the lease in good standing by timely payment of the annual rental.

Tenneco Oil Co., Cordillera Corp., 44 IBLA 171 (Nov. 30, 1979)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control which were the proximate cause of the failure.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment.

Robert R. Schnurbusch, 44 IBLA 229 (Dec. 11, 1979)

The sending of an unsigned check for the annual rental of an oil or gas lease does not constitute timely payment, even if received on or prior to the anniversary date of the lease. BLM has no obligation to present an unsigned check for payment since such a check is not a negotiable instrument.

A lessee's failure to make timely payment of annual rental on an oil and gas lease is not justified when based on ignorance of the applicable law and regulations requiring payment on or prior to the lease anniversary date.

A contention that appellants were unclear as to the anniversary date of the lease which thereupon resulted in an untimely payment of the rental will not be sustained where the Department's records correctly show the anniversary date, or the lessee has actual knowledge of the correct due date prior thereto.

C. J. Streit and Bernard J. Streit, 44 IBLA 265 (Dec. 26, 1979)

RIGHTS-OF-WAY LEASES

Where a protest against the United States entering into a compensatory royalty agreement pertaining to oil and gas underlying a railroad right-of-way pursuant to the Act of May 21, 1930, 46 Stat. 373, 30 U.S.C. § 301 *et seq.* (1970), is based upon an assertion that the protestants have title to the oil and gas under the right-of-way, the protest will be properly dismissed if it is found the United States has title to those minerals.

Although the grants of a right-of-way to a railroad under sec. 2 of the Act of July 1, 1862, and of title to odd-numbered sections of land under sec. 3 of that Act were grants *in praesenti*, the railroad's interest in the right-of-way land stems solely from sec. 2. There is no difference in its interest in portions of the right-of-way land which cross even-numbered sections of land and in portions which cross odd-numbered sections. Minerals underlying the right-of-way were reserved to the United States in both instances.

Title to the oil and gas deposits underlying the right-of-way granted to a railroad by the Act of July 1, 1862, 12 Stat. 489, did not pass under a patent to the land that the right-of-way crosses. Rather, title remains in the United States.

Brown W. Cannon, Jr., et al., 24 IBLA 166 (Mar. 16, 1976)
83 I.D. 80

OIL AND GAS LEASES--Continued

RIGHTS-OF-WAY LEASES--Continued

The Secretary of the Interior does not have authority under the Right-of-Way Oil and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 *et seq.* (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the mineral estate was included within the grant to the patentee.

It is improper to dismiss a protest against issuance of an oil and gas lease applied for pursuant to the Act of May 21, 1930, 30 U.S.C. § 301 *et seq.* (1970), for lands underlying a railroad right-of-way granted under the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented without a reservation for minerals. In such case title to the mineral estate underlying the right-of-way is no longer held by the United States and, therefore, a lease issued pursuant to the 1930 Act is void and must be canceled.

Amerada Hess Corp., 24 IBLA 360 (Apr. 27, 1976)
83 I.D. 194

Where the official records of the Bureau of Land Management show a reservoir right-of-way affecting certain land, the oil and gas therein may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.* (1970). This result follows even though the reservoir right-of-way may have been issued improperly or should have been terminated.

Republic Oil & Mining Co. and Margaret V. Coombs,
35 IBLA 212 (May 26, 1978)

ROYALTIES

The minimum royalty required under an oil or gas lease following discovery, but prior to actual production, of oil or gas, must be satisfied; if advance royalties have been paid on take or pay payments made to a lessee-seller by a buyer in lieu of receiving production from the lease, they may be credited to the amount due for royalties on actual production in subsequent years, but only to the extent they are in any year in excess of the amount of the minimum royalties prior to the actual production.

Generally, the Government is not estopped from demanding oil and gas lease royalty payments it is owed, even if its employees may have made prior mistakes in accepting or computing the royalty.

Gulf Oil Corp. et al., 21 IBLA 1 (June 16, 1975)

Even where statute, regulation, and the oil and gas lease itself do not specifically provide for the payment of prejudgment interest on royalties owed to the United States, such interest may be imposed by the United States; equity principles may authorize such imposition. A charge for such interest may be imposed despite delays in processing the debtor's appeals, where the debtor assertedly relied upon an earlier Departmental decision which, only when taken out of context, would tend to support the debtor's posture.

An Oil and Gas Supervisor of the Geological Survey has authority to demand prejudgment interest based upon the failure of an oil and gas lessee to pay timely royalties owed to the Government, despite the fact that the Supervisor is an employee of the Executive Branch.

Where an oil and gas lessee appeals from a decision of an Oil and Gas Supervisor's determination that additional royalties are due to the Government, and simultaneously files a request for suspension of the ruling, which is granted by the Geological Survey "until further notice," prejudgment interest continues to accrue during the period of the suspension. This conclusion is premised on the doctrine that interest is compensation for delay in payment.

A demand by the Geological Survey for prejudgment interest for delayed payment of additional royalties owed to the Government is not necessarily unenforceable in the courts because it was not asserted as a counterclaim under Rule 13(a) of the Federal Rules of Civil Procedure.

Atlantic Richfield Co., 21 IBLA 98 (June 30, 1975)
82 I.D. 316

In interpreting provisions of State leases which have been validated under sec. 6 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1335 (1970), the Department will give great weight to judicial and administrative interpretations rendered by officials of that State. Where, however, there is a conflict of opinion between State officials as to the proper interpretation of a provision of a State lease, the Department of the Interior will independently interpret that section, applying the general rules of contract construction.

Ocean Drilling & Exploration Co., Chevron Oil Co.,
21 IBLA 137 (July 15, 1975)

Reasonable transportation costs of production from oil and gas leases from the field to the first available market are allocable to the Federal or Indian royalty interest.

Kerr-McGee Corp., 22 IBLA 124 (Sept. 26, 1975)

"Production." "Production" as used in all Federal oil and gas leases includes all oil and gas withdrawn from a reservoir.

In the absence of a specific statutory bar, such as is found in secs. 16 and 19 of the Mineral Leasing Act of 1920, royalty is due in the "amount or value" of all production from a Federal oil and gas lease, including vented and flared gas and gas or oil leaked, spilled or used in producing operations.

An assessment greater than the normal royalty charge may be required for oil and gas that are wasted.

Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clauses, M-36888 (Oct. 4, 1976) 84 I.D. 54

"Production." Oil or gas that is wasted is in a category by itself, distinctly separable from "production," when it is oil or gas that is lost on the surface or in the subsurface through the negligence of the lessee, *i.e.*, without the specific sanction of the supervisor.

The loss through waste to the lessor compensable under 30 CFR 250.30 is either the royalty or the full value and the choice between them is a matter which is committed to the sound exercise of the supervisor's discretion.

Whereas 30 CFR 221.46 and 221.50 clearly indicate the lessee must pay royalty on all production, the lessee is obligated to pay full value on all gas wasted

(221.35), and the supervisor has no discretion to collect less than the full value of gas wasted.

Computation of Moneys Due the United States on Oil and Gas Lost as a Result of Pennzoil's Blowout. M-36888 (Supp.) (Jan. 19, 1977) 84 I.D 64

The Oct. 4, 1976, Solicitor's Opinion (M-36888), in effect, found that the Secretary, by permitting exemptions from royalty requirements for oil and gas used for production purposes or unavoidably lost, was alienating the royalty interest of the United States on certain leases without authority to do so.

Court cases indicate that it is in the Secretary's discretion to apply the corrected interpretation of the statutes in the collection of additional royalty retroactively or prospectively based on equitable considerations.

The Secretary is limited in the exercise of this authority only by the rule of estoppel where the application of the corrected interpretation of law threatens to work a serious injustice and if the public's interest would not be unduly damaged by the imposition of estoppel.

Effect of Oct. 4, 1976, Solicitor's Opinion M-36888. M-36888 (Supp. II) (Mar. 9, 1977) 84 I.D. 171

In determining the amount of royalty due to the United States from an oil and gas lease, it is proper for the Geological Survey to use a base value which includes both the purchase price paid for the natural gas plus any additional sum paid by the purchaser of the gas to the seller as consideration for the purchase of gas.

Amoco Production Co., 29 IBLA 234 (Mar. 25, 1977)

The royalty provisions of a State lease validated under sec. 6 of the Outer Continental Shelf Lands Act will govern the determination of the royalty due to the United States.

The royalty provisions on a State of Louisiana 1942 lease form subsequently validated under sec. 6 of the Outer Continental Shelf Lands Act provide either for (1) delivery of royalty oil in kind to the lessor free of expense with delivery understood as being made when the oil has been received by the first purchaser or, (2) at the option of the lessee, payment of the value of the oil, with certain express disallowances, including no deduction for transportation charges. Constructive delivery of in-kind royalty must be authorized and accepted by the lessor to constitute a payment of royalty. The delivery-in-kind provision does not authorize the lessee to act as agent of the United States, and is not applicable where the lessee has not notified Geological Survey of any purported constructive delivery of oil to the first purchaser and Survey has not accepted such constructive delivery. Therefore, the second provision is applicable which expressly precludes deductions of transportation costs.

Superior Oil Co., 31 IBLA 127 (June 30, 1977)

Congress has provided that failure to pay annual rental timely for an oil and gas lease shall cause the lease to terminate automatically by operation of law under 30 U.S.C. § 188(b) (1970). An oil and gas lease is not deemed to have terminated for failure to pay rental timely where, because of misleading communications from the Geological Survey and the Bureau of Land Management, it appeared the lease was in a royalty status and the lessee did not have reason to know that the rental was due.

Davis Oil Co., et al., 33 IBLA 53 (Nov. 25, 1977)

Where a unit agreement provides that royalty on production shall be paid at the rate set forth in the individual lease terms, and the lease provides that no royalty shall be due on gas used for production purposes, it is proper to deduct the amount of gas used for production purposes on a lease from the gross allocation of gas to that lease before making the computation of royalty due to the United States.

Amoco Production Co. (On Reconsideration), 35 IBLA 43 (May 9, 1978)

An oil and gas lease issued for a primary term of 10 years on which there is no production will expire by its own terms where the lessee has not commenced drilling operations on the leasehold at the end of the term, and payment of compensatory royalty will not extend the lease where there has been no showing that the leasehold is subject to drainage from wells on an adjoining property.

Bell Resources, Inc., 38 IBLA 330 (Dec. 19, 1978)

An oil and gas lease issued for a primary term of 10 years and extended for 2 years by drilling cannot be extended further by payment of compensatory royalty where there is no showing that the leasehold is suffering drainage from an adjoining tract, and no compensatory royalty has been assessed by the district supervisor under 30 CFR 221.21(c).

Chaparral Resources, Inc., 39 IBLA 269 (Feb. 15, 1979)

A request for refund of excess payments under 43 U.S.C. § 1339 (1970) must be made as the limitation in the statute provides, within 2 years from the date such payments are actually made.

Phillips Petroleum Co., 39 IBLA 393 (Mar. 2, 1979)

Where the holder of an oil and gas lease on the Outer Continental Shelf has filed a suit in a Federal district court to recover certain royalties paid under his lease, the Board of Land Appeals will affirm a decision of the Director, Geological Survey, holding in abeyance the lessee's request for a refund while the suit is pending.

Tenneco Oil Co., 41 IBLA 195 (June 22, 1979)

STIPULATIONS

As a condition precedent to the issuance of an oil and gas lease, the Department of the Interior may require an applicant to accept a reasonable surface management stipulation for the protection of wildlife and watershed values.

Richard E. Cullen, 18 IBLA 414 (Feb. 10, 1975)

Where the Forest Service suggests a stipulation barring any occupancy and use of the surface as a condition precedent to the issuance of an oil and gas lease for public lands in a national forest, based only on the fact that the land is in an "inventoried roadless area," and where later the Forest Service agrees to a revised stipulation, the Bureau of Land Management decision to the extent it required the execution and filing of the "Roadless Area" stipulation will be set aside and the case remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

James A. Krumhansl, 19 IBLA 56 (Feb. 21, 1975)

Where the Forest Service requests a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, based on the fact that the land is in an "inventoried roadless area," and where the Forest Service later substitutes a less restrictive stipulation, a Bureau of Land Management decision requiring the execution and filing of the roadless area stipulation will be vacated and the case will be remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

Benjamin T. Franklin, 19 IBLA 94 (Mar. 4, 1975)

Where an application to lease land under the jurisdiction of another agency is rejected because of objections by that agency, and where on appeal that agency subsequently agrees to lease the land subject to certain special stipulations, such stipulations will be submitted to the offeror for execution.

Shell Oil Co., 20 IBLA 282 (May 27, 1975)

Where the Forest Service requests imposition of a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, the case will be set aside and remanded for consideration of a less stringent stipulation which the Forest Service has agreed to in other cases arising in the same and other national forests in Utah.

G. W. Anderson, 21 IBLA 328 (Aug. 14, 1975)

The execution of special stipulations as a condition precedent to issuance of oil and gas leases for land located in a national forest may be required at the discretion of the Secretary of the Interior in order to protect environmental and other land use values. The need for the stipulation should be clear and the stipulation should be a reasonable means to the intended purpose. The Forest Service's recommended stipulations will be carefully considered by the Department, but the final authority for oil and gas leasing on public domain land rests in this Department.

Earl R. Wilson, 21 IBLA 392 (Aug. 27, 1975)

Where the reasons given for rejection of an oil and gas lease offer are that several archaeological sites, possibly other such archaeological sites, and scenic values of certain lands might be endangered by oil and gas development, but the field report relied upon does not delineate the archaeological sites and fails to describe the scenic values that would be affected, the decision may be set aside and the case remanded for further investigation to determine if oil and gas

leasing could be allowed with protective stipulations, or, if not, to substantiate the basis for rejection.

Phillip S. Mahoney, 22 IBLA 136 (Sept. 26, 1975)

On appeal from decision(s) rejecting oil and gas lease offer(s) insofar as they include land(s) within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the land(s) under a no-surface-occupancy stipulation, and the offeror(s) indicate they would accept such a stipulation for all the land(s) at issue, the decision(s) will be set aside and the case(s) remanded for consideration of issuance of lease(s) containing no-surface-occupancy stipulation(s) on the land(s) in the lava flow.

Houston Oil and Minerals Corp., Leland A. Hodges (Trustee), 22 IBLA 172 (Sept. 30, 1975)

Leland A. Hodges (Trustee), 23 IBLA 142 (Dec. 22, 1975)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect identifiable resource values as a condition precedent to issuance of an oil and gas lease. Stipulations proposed by the Forest Service will be carefully considered by this Department, but the final decision for oil and gas leasing on public domain land rests with this Department. A "no surface occupancy" stipulation proposed in order to protect a recreation area cannot stand if it might preclude surface occupancy unreasonably beyond the boundaries of the recreation area.

Beverley Lasrich, 22 IBLA 202 (Oct. 15, 1975)

It is well established that the execution of appropriate special stipulations as a condition precedent to the issuance of oil and gas leases may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values.

While "no surface occupancy" stipulations should be of sufficient efficacy to protect the environment, no lease should issue with stipulations so restrictive that the use of the land for any purpose associated with the production of oil and gas is totally precluded.

The financial burden of complying with protective stipulations in oil and gas leases is the sole responsibility of the lessee.

Bill J. Maddox, 24 IBLA 147 (Mar. 10, 1976)

The financial burden of complying with stipulations included in an oil and gas lease is the sole responsibility of the lessee.

Duncan Miller, 24 IBLA 203 (Mar. 19, 1976)

A decision rejecting an oil and gas lease offer because the State Office wishes to reconsider whether a lease should issue subject to a no surface occupancy stipulation will be set aside and the case remanded for the Bureau of Land Management, in the exercise of its delegated discretion to lease public lands for oil and gas, to determine whether in the light of *Chevron Oil Co.*, 24 IBLA 159 (1976), it wishes to issue a lease subject to a no surface occupancy stipulation, or whether

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

it still wishes to make the subject land not available for leasing at this time, which is within its authority.

Milan S. Parulak, 24 IBLA 278 (Mar. 30, 1976)

The execution of special stipulations as a condition precedent to the issuance of an oil and gas lease may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

Cartridge Syndicate, 25 IBLA 57 (May 20, 1976)

An applicant for an oil and gas lease may be required to accept stipulations designed for the protection of the land and its resources in the public interest as a condition precedent to issuance of a lease where the stipulation does not unreasonably interfere with the rights conferred by an oil and gas lease. A stipulation requiring lessee, at his own expense, to make an inventory of archaeological and historical sites on those areas of the leased lands which he proposes to enter for purposes of exploration or drilling and to agree to reasonable conditions of use designed to protect any valuable sites or objects disclosed by the inventory is reasonable and will be upheld.

W. E. Haley, 25 IBLA 311 (June 29, 1976)

C. C. Hughes, 27 IBLA 38 (Sept. 22, 1976)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where a Bureau of Land Management district-wide environmental analysis record establishes the likelihood that significant archaeological values are prevalent in the district and may be found in the land embraced by leases in that district, a special protective stipulation is not unreasonable solely because no archaeological values have yet been discovered in the lands in the lease offer.

Oil and gas lessees must bear the expenses occasioned by compliance with stipulations for the protection of the environment and other land use values.

A stipulation requiring an oil and gas lessee to provide a certified statement by an archaeologist concerning the existence of archaeological values on lands to be disturbed by the lessee does not constitute an unlawful delegation of authority because the purpose of the statement is to notify an authorized officer of the Department who retains the authority to determine whether the archaeological data are significant and whether such data are being or may be irrevocably lost or destroyed.

Cecil A. Walker, Alan C. F. Dille, 26 IBLA 71 (July 9, 1976)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated basis for the imposition of the stipulation is the threat of oil and gas activities to automobile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern K. Jones et al., 26 IBLA 165 (Aug. 4, 1976)

Where the transmittal of an appeal to the Board of Land Appeals is accompanied by the request of the State Director that the case be remanded because the special stipulation which accompanied the decision from which the appeal was taken was not the correct one, the case is remanded for further consideration by the Bureau of Land Management, and the Board of Land Appeals does not pass on the reasonableness of either stipulation.

A A Minerals Corp., 27 IBLA 1 (Sept. 17, 1976)

Applicants for oil and gas leases may be required to accept a stipulation as reasonable and in the public interest and in accord with national and departmental policy, which stipulation requires lessees to engage the services of a qualified professional archaeologist to conduct a survey of the areas to be disturbed for evidences of archaeological or historic sites or materials with the cost to be borne by the lessees, but such archaeologist is not required to work only under the authority of a current Antiquities Act permit.

General Crude Oil Co., 28 IBLA 214 (Dec. 10, 1976)
83 I.D. 666

The Secretary of the Interior may require an offeror for a noncompetitive oil and gas lease to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of a lease. A stipulation requiring lessee, at his own expense, to make an inventory of archaeological and historical sites on those areas of the leased lands which he proposes to enter for purposes of exploration or drilling and to agree to reasonable conditions of use designed to protect any valuable sites or objects disclosed by the inventory is reasonable and will be upheld.

Milan S. Parulak, 30 IBLA 220 (May 26, 1977)

The Secretary of the Interior may require offerors for noncompetitive oil and gas leases to accept stipulations reasonably designed to protect environmental and other land use values prior to the issuance of the leases. A stipulation which may require the lessee, at his own expense, to make an inventory of all archaeological, paleontological, and historical sites on those areas of the lease which he proposes to enter for exploration or drilling, and to accept reasonable conditions of use for the protection of such sites and artifacts and which requires the lessee to bear the cost of salvaging all objects of antiquity, is reasonable and will be upheld.

Milan S. Parulak, 31 IBLA 69 (June 23, 1977)

Duncan Miller, 32 IBLA 322 (Oct. 3, 1977)

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, proposed special stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest. It is the Bureau's responsibility to impose stipulations which are necessary, appropriate and reasonably related to oil and gas activities, and a

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

stipulation which would forbid the lessee to occupy the surface must be set aside on appeal where BLM fails to provide adequate justification for its imposition and fails to show that it has considered less stringent stipulations.

Nova B. Henderson, 31 IBLA 217 (July 6, 1977)

The Secretary of the Interior may in his discretion reject any offer to lease public lands for oil and gas upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. Where part of the lands applied for are in the Bonneville Salt Flats, and the Bureau of Land Management determines that oil and gas leasing activities are not compatible with the primary management objective to prevent irreparable damage to a significant resource, rejection of the lease offers or the requirement of execution of surface occupancy stipulations will be affirmed.

Vern K. Jones et al., Eadran E. Hartley, 33 IBLA 74 (Dec. 6, 1977)

The Bureau of Land Management may require the execution of special stipulations, including a no-surface-occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation along a proposed wild and scenic river corridor, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Cuesta Petroleum Co., 33 IBLA 116 (Dec. 16, 1977)

Dean W. Powell, 37 IBLA 387 (Nov. 6, 1978)

Where, rather than delay action on an oil and gas lease offer pending a wilderness review and management decision pursuant to sec. 603 of the Federal Land Policy and Management Act, the Bureau of Land Management proposes to issue the lease immediately subject to a "no surface occupancy" stipulation under the apparently mistaken impression that the applicant had so requested, the decision will be set aside and action on the lease offer will be deferred until a final decision can be made.

Dell K. Hatch and Amoco Production Co., 33 IBLA 138 (Dec. 19, 1977)

The Bureau of Land Management may require the execution of special stipulations, including a no-surface occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation in a scenic area, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Robert L. Healy, 35 IBLA 66 (May 12, 1978)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

A stipulation prohibiting drilling and storage of oil on a portion of an oil and gas lease of 160 acres in order to protect an area of a river which is in a study section of the Wild and Scenic Rivers Act is reasonable, without consideration of other factors, where it leaves three-quarters of the lease open to regular activity.

Duncan Miller, 35 IBLA 108 (May 15, 1978)

Upon a determination that a stipulation, which was not expressly made applicable to a parcel of land in the Notice of Availability, should be applied to an oil and gas lease, the State Office should inform the offeror of its intent to apply the stipulation. The application of such a stipulation is reviewable under 43 CFR 4.410.

Duncan Miller (On Reconsideration), 39 IBLA 312 (Feb. 23, 1979)

The Bureau of Land Management may require the execution of special stipulations to protect environmental and other land use values when deciding to issue a lease.

Robert E. Kunkel, 41 IBLA 77 (May 31, 1979)

Where the surface administering agency proposes stipulations to protect the wilderness potential of National Forest lands from oil and gas operations, additional stipulations to that end are not to be imposed by the Bureau of Land Management, absent a compelling showing of need therefor.

Robert Schulein, 41 IBLA 253 (June 28, 1979)

Robert Schulein, 42 IBLA 56 (July 31, 1979)

Where Bureau of Land Management requests within 30 days the execution of special stipulations prepared by the Forest Service for acquired lands embraced in a noncompetitive oil and gas lease offer, filed over-the-counter, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days.

Hansen Brothers, 42 IBLA 40 (July 31, 1979)

Where the land embraced in a proposed oil and gas lease, to be issued subsequent to the enactment of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), has been identified as having wilderness characteristics and is being reviewed for possible preservation as wilderness pursuant to sec. 603 of that Act, it is proper for the Bureau of Land Management to require the execution of a special stipulation providing that consent to oil and gas operations will not be given if it is determined that such operations will impair the land's wilderness characteristics.

Where the land embraced in a proposed oil and gas lease has been identified as having wilderness characteristics and is being reviewed for possible preservation as wilderness pursuant to sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), it is proper for the Bureau of Land Management to require the execution of a special stipulation providing that oil and gas operations are subject to regulation where the obvious aim is protecting the wilderness values inherent in the land.

Reserve Oil, Inc., et al., 42 IBLA 190 (Aug. 22, 1979)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

It is not improper for BLM to require an oil and gas lease offeror to sign a stipulation which provides that the lease will be subject to regulations promulgated by the Department of Energy relating to those areas specified in sec. 302 of the Department of Energy Organization Act of 1977, even though the offeror as lessee would be bound to follow the law and regulations if he did not sign the stipulation, as the stipulation merely serves the purpose of informing him that the statute and regulations will apply.

James M. Chudnow, 42 IBLA 307 (Aug. 29, 1979)

Where BLM's decision to reject a noncompetitive lease offer is based upon a report that the findings and conclusions contained in the Management Framework Plan (MFP) for the area show that acceptance of the offer would not be in the public interest because the lease would threaten valuable wildlife, archaeological, paleontological, scenic, and recreation values, and it is subsequently revealed that the report relied upon misstated the contents of the MFP, which actually made provision for mineral leasing subject to certain protective stipulations, the decision will be reversed and remanded with instructions to issue the lease with appropriate and reasonable stipulations.

James O. Breene, Jr. (On Reconsideration), 42 IBLA 395 (Sept. 11, 1979)

A decision rejecting an oil and gas lease offer because it would result in undue degradation of the environment will be set aside where the record does not clearly support the conclusion reached by BLM.

John M. Lebfrom, 43 IBLA 67 (Sept. 19, 1979)

Departmental regulations 43 CFR Subpart 3109 and 43 CFR 3120.2-3, and sec. 603 of the Federal Land Policy and Management Act of 1976 provide ample authority for the Bureau of Land Management to require oil and gas lessees to agree to wilderness protection stipulations.

Where the notice of a competitive oil and gas lease sale clearly provided that the lease would be subject to stipulations, by making a bid, the offeror was bound to accept the stipulations.

Palmer Oil and Gas Co., 43 IBLA 115 (Sept. 24, 1979)

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, on appeal such special stipulations must be supported by valid reasons which will be weighed by the Department with due regard for the public interest, and where the stipulation and reason therefore does not appear in the record, the record must be augmented on remand.

James M. Chudnow, 43 IBLA 375 (Oct. 31, 1979)

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Oil and gas offers should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

David H. Yates, 44 IBLA 121 (Nov. 27, 1979)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

The Bureau of Land Management, on behalf of the Secretary of the Interior, may condition issuance of a lease on the execution of a no surface occupancy stipulation where on appeal the record shows that the Bureau has adequately considered the factors involved and the stipulation is a reasonable means to accomplish proper Departmental purposes.

R. E. Shillander, 44 IBLA 216 (Dec. 11, 1979)

SUSPENSIONS

A regulatory change in the definition of the phrase "primary term" of an oil and gas lease is not an order or consent of the Secretary of the Interior to suspend operations under an oil and gas lease.

Inexco Oil Co., 20 IBLA 134 (May 5, 1975)

Where an oil and gas lessee appeals from a decision of an Oil and Gas Supervisor's determination that additional royalties are due to the Government, and simultaneously files a request for suspension of the ruling, which is granted by the Geological Survey "until further notice," prejudgment interest continues to accrue during the period of the suspension. This conclusion is premised on the doctrine that interest is compensation for delay in payment.

Atlantic Richfield Co., 21 IBLA 98 (June 30, 1975)
82 I.D. 316

Applications by lessees for relief of producing requirements must be made to the appropriate Regional Oil and Gas Supervisor of the Geological Survey. No suspension of operations and production is authorized in the absence of a well capable of production on the leasehold, except when the Secretary directs a suspension in the interest of conservation.

Duncan Miller, 21 IBLA 361 (Aug. 25, 1975)

A nonproducing oil and gas lease expires and may not be retroactively suspended when there is no suspension application pending at the time of expiration. The filing of an application for permit to drill and Geological Survey's delay in acting on the application do not create a de facto suspension of the lease.

Jones-O'Brien, Inc., 1 SEC. 13 (Apr. 21, 1978)
85 I.D. 89

The Department of the Interior is not authorized to suspend an expired noncompetitive oil and gas lease so as to revive and extend the lease term unless an application therefor was filed before the expiration of the lease.

Burton Hancock, 40 IBLA 1 (Mar. 6, 1979)

The provision in a unit agreement allowing suspension of production requirements for unavoidable delays does not supplant the lessee's responsibility to comply with the procedure set out in the regulation for obtaining a suspension. A written application for suspension must be filed in triplicate with the area oil and gas supervisor prior to the expiration of the leases.

Suspension of production requirements for leases on which there are no wells capable of producing in paying quantities must be approved by the Secretary; this

OIL AND GAS LEASES--Continued

SUSPENSIONS--Continued

authority is not delegated to other officers below the Secretarial level.

American Resources Management Corp., 40 IBLA 195 (Apr. 5, 1979)

There is no authority to suspend an oil and gas lease terminated by operation of law for failure to pay the annual rental on or before the anniversary date of the lease where no application for suspension was filed before the lease terminated.

Tenneco Oil Co., Cordillera Corp., 44 IBLA 171 (Nov. 30, 1979)

TERMINATION

Oil and gas leases terminate by operation of law if the annual rental payment is not actually received in the proper office by the close of the business day.

E. J. Harvey, Jr., 19 IBLA 230 (Mar. 25, 1975)

An oil and gas lease is automatically terminated by operation of law where an unsigned rental check is tendered prior to the anniversary date of the lease but is not signed and returned until after the anniversary date.

Richard S. Bowman, 19 IBLA 261 (Mar. 31, 1975)

An oil and gas lease terminated by operation of law for failure to pay the annual rentals on time may be reinstated where the lessee's delay in making payment was due to his seeking clarification of an illegible notice of payment sent by the Bureau of Land Management, and his action demonstrates his reliance on the notice.

Joseph E. Sieger, 20 IBLA 206 (May 8, 1975)

When an oil and gas lease, extended beyond the primary term because of production, no longer has a well capable of producing oil or gas in paying quantities, the lease terminates by operation of law if within 60 days after cessation of production no approved reworking or drilling operations are begun on the lease.

Estate of Anna Aronow, 20 IBLA 364 (June 11, 1975)

Under the provisions of 43 CFR 3107.2-1(b)(2) (1973) an oil and gas lease which had been committed to a unit and extended as a result of production occurring within that unit, is not within its primary term but rather is held by production. Therefore, the diligent drilling extension provision of 43 CFR 3107.2-3 is not available as a method of further extension since that provision is limited to leases in their primary term.

Tenneco Oil Co., Sun Oil Co., 21 IBLA 130 (July 14, 1975)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Before relief may be granted to the lessee of a terminated oil and gas lease, he must comply with the prerequisites set forth in 30 U.S.C. § 188 (1970). The Secretary has no authority to waive such statutory prerequisites.

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the lease rental timely.

Advice or information received over the telephone from personnel of the Bureau of Land Management does not constitute a "bill or decision rendered by" the Department under 30 U.S.C. § 188(b) (1970).

Only when a lessee has made a deficient rental payment on or before the anniversary date of an oil and gas lease will a Notice of Deficiency be sent. If no payment at all is made, the lease will not qualify for consideration under the exceptions to automatic termination set forth in 30 U.S.C. § 188(b) (1970).

A Notice of Termination is sent to the lessee of a terminated oil and gas lease only if he has tendered payment of the rental within 20 days after the anniversary date.

C. J. Iverson, 21 IBLA 312 (Aug. 14, 1975) 82 I.D. 386

Where a lessee fails to pay the annual rental on or before the anniversary date, and where the lessee knew, or should have known, that the payment was due, estoppel will not operate to relieve the lessee of the consequent automatic termination of the lease.

The Polumbus Corp., 22 IBLA 270 (Oct. 30, 1975)

Where the deficiency in rental paid on or before the anniversary date of a lease is nominal and a notice of deficiency is sent to the lessee, the lease terminates by operation of law when the balance is not paid within 15 days from receipt of the notice or until the anniversary date, whichever is later.

No petition for reinstatement of an oil and gas lease terminated by operation of law, 30 U.S.C. § 188(c) (1970), may be entertained if the full amount of rental due was not paid within 20 days after the anniversary date of the lease.

Joseph Francis, 22 IBLA 277 (Oct. 30, 1975)

An oil and gas lease in a unit area will be held to have been extended by diligent drilling on the anniversary date even though the lease was not properly committed to the unit, where the parties in interest and the Department had assumed that the land was properly committed and there are no intervening rights to the leasehold.

Woods Petroleum Corp., 23 IBLA 12 (Nov. 25, 1975)

A petition for reinstatement of an oil and gas lease which has expired by operation of law for failure to make payment of the annual rentals on time will be denied where the petition is filed with the appropriate office more than 15 days after receipt of notification of termination of the lease.

Where the advance rental check is received within 20 days after the anniversary date, the Bureau may deposit said check in an "unearned" account in order to preserve the right of the lessee to petition for reinstatement of the terminated lease and to safeguard the

OIL AND GAS LEASES--Continued

TERMINATION--Continued

check, create a record of the payment, and bring it under accounting control. This does not signify acceptance of the payment, or indicate that the lease has not terminated, or create an estoppel against the Government.

John J. Nordhoff, Dean Kirk, 24 IBLA 73 (Feb. 26, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated when the lessee shows that its failure to pay the rental on or before the anniversary date was justifiable.

Great Basins Petroleum Co., 24 IBLA 117 (Mar. 1, 1976)

An oil and gas lease which has terminated by operation of law for failure to pay the annual rental on or before the due date may not be reinstated unless, among other things, payment has been tendered at the proper office within 20 days of the anniversary date.

Merlin E. Huston, C. D. Sharpe, 24 IBLA 269 (Mar. 29, 1976)

A. E. White et al., 28 IBLA 91 (Nov. 12, 1976)

Beatrice G. Wood, 42 IBLA 141 (Aug. 16, 1979)

Denial of a request for approval of an assignment of an interest in an oil and gas lease is proper where (1) the lease had terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1970) for failure to make timely payment of rental, and where (2) the assignor is a stranger to the lease, and the record is devoid of any assignment from the lessees of record to the assignor.

Albert DiDivilio, Jr., Gennaro J. Grande and Jeremy V. Cohen, 26 IBLA 169 (Aug. 4, 1976)

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), he cannot obtain the extension.

The provisions of 30 U.S.C. §§ 188(b) and (c) (1970), and decisions of the Board discussing those provisions, are generally applicable to both competitive and noncompetitive oil and gas leases on which there is no well capable of producing oil or gas in paying quantities.

"Cancellation" and "termination." The "cancellation" and the "termination" of oil and gas leases are separate, distinct concepts. Cancellation requires a specific act by the Department authorized by various statutes. Termination under 30 U.S.C. § 188(b) (1970), is automatic, occurring by operation of law when the lessee fails to pay his rental timely.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Where the fact that a bank improperly dishonored a check drawn thereon is not corroborated by an official of the bank until after the State Office issued its decision adverse to oil and gas lessee, the decision will be set aside and the case remanded for further consideration in light of the bank's admission of error.

Gretchen Capital, Ltd., 29 IBLA 247 (Mar. 25, 1977)

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the lease rental timely.

Energy Resources, Inc., 30 IBLA 11 (Apr. 8, 1977)

When an oil and gas lease is in royalty status and acreage containing the well is segregated into a new lease by approval of an assignment, the nonproductive base lease does not terminate for failure to pay rental timely if the Bureau of Land Management does not inform the lessee of the segregation until after the anniversary date of the lease.

Odessa Natural Corp., 30 IBLA 28 (Apr. 11, 1977)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date, even though the lease may also have production at that time.

Rio Blanco Natural Gas Co., 30 IBLA 191 (May 19, 1977)
84 I.D. 196

The lessee of an acquired lands oil and gas lease issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970), on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), the lease must be deemed to have terminated at the end of its stated term.

Shell Oil Co., 30 IBLA 290 (June 1, 1977)

The Board of Land Appeals will entertain and grant a motion by the Bureau of Land Management to remand an oil and gas lease case on appeal to the Board from a decision holding the lease had terminated and denying a petition to reinstate the lease, where BLM discovered, while the case was on appeal, that its decision was predicated on an erroneous factual basis in that annual rental for the lease had actually been paid on time, but the check had been misplaced by BLM and was later found.

Kathryn J. Ealing, 31 IBLA 1 (June 15, 1977)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

A prerequisite of the reinstatement process is the tender of payment within 20 days of the anniversary date which protects the right of the lessee to petition for reinstatement. The check is then deposited in an unearned account to create a record of it, and bring it under accounting control, however, depositing of the check does not create an estoppel against the Government.

Adolph F. Mazatori, 31 IBLA 39 (June 21, 1977)

An oil and gas lease in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no reworking or drilling operations are begun within 60 days after cessation of production. In this situation the lessee is not entitled to written notice and 60 days to place the well in a producing status.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Universal Resources Corp., et al., 31 IBLA 61 (June 23, 1977)

Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent.

Pauline V. Trigg, John H. Trigg, 31 IBLA 296 (July 22, 1977)

Congress has provided that failure to pay annual rental timely for an oil and gas lease shall cause the lease to terminate automatically by operation of law under 30 U.S.C. § 188(b) (1970). An oil and gas lease is not deemed to have terminated for failure to pay rental timely where, because of misleading communications from the Geological Survey and the Bureau of Land Management, it appeared the lease was in a royalty status and the lessee did not have reason to know that the rental was due.

Savio Oil Co., et al., 33 IBLA 53 (Nov. 25, 1977)

The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

Gaye E. Jenkins, 33 IBLA 135 (Dec. 19, 1977)

An oil and gas lease which is in rental status terminates when the annual advance rental is not properly received in the State Office by the anniversary date of the lease.

Julia Holmes, 33 IBLA 231 (Dec. 28, 1977)

A check tendered prior to the due date of an oil and gas lease annual rental payment, which is properly dishonored by the drawee bank, does not constitute timely payment. But where return of the check results from a confirmed bank error, subsequent collection and payment of the check relates back to the time of the original tender, and payment is timely.

Fireline Petroleum Corp., 34 IBLA 73 (Feb. 22, 1978)
85 I.D. 30

A nonproducing oil and gas lease expires and may not be retroactively suspended when there is no suspension application pending at the time of expiration. The filing of an application for permit to drill and Geological Survey's delay in acting on the application do not create a de facto suspension of the lease.

Jones-O'Brien, Inc., 1 SEC. 13 (Apr. 21, 1978)
85 I.D. 89

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Manhattan Resources, Inc., 34 IBLA 346 (Apr. 28, 1978)

It is the responsibility of a lessee to see that any payment tendered for annual rental under an oil and gas lease is so identified that the appropriate State office can credit the payment to the proper lease account. However, where an appellant demonstrates that the rental money was received timely by the appropriate State Office, and the evidence indicates that the lessee subsequently gave timely and proper instructions as to its application, the lease is properly deemed to have not terminated.

Pacific Transmission Supply Co., 35 IBLA 263 (June 2, 1978)

An oil and gas lease terminates automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank on which it is drawn. However, if a lessee provides adequate evidence, such as an admission by a bank official, that the bank erroneously dishonored the check, the error of the bank may not vitiate the otherwise proper payment of rental to BLM.

Don C. Wiley, 35 IBLA 302 (June 2, 1978)

Absent an affirmative billing error by BLM, a Federal oil and gas lessee is entitled to a Notice of Deficiency in regard to advance rental only where such lessee has made timely payment of the lease rental and the payment tendered is deficient by not more than $10 or 5 percent of the total amount due, whichever is greater.

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

A purported assignment of an oil and gas lease does not relieve the lessee of record of the responsibility to make timely payment of all rentals until such assignment is formally approved by BLM.

Great Basins Petroleum Co., 36 IBLA 42 (June 30, 1978)

In the absence of joint lessees establishing the existence of a prior agreement that a particular lessee was responsible for payment of the oil and gas lease rental, the failure of the joint lessees to pay the rental timely is a joint failure and the joint lessees must each satisfy the reinstatement requirements of 30 U.S.C. § 188(c) (1976). In the absence of reasonable diligence, the lease cannot be reinstated unless each joint lessee can show that he has a justifiable excuse for failing to pay the rental timely.

Frederick C. Farrington, George M. Boffman, 36 IBLA 70 (June 30, 1978)

The automatic termination provision in sec. 31 of the Mineral Leasing Act, *as amended*, does not apply to a situation where, due to other contingencies, additional rental may become due on a date other than the anniversary date of a lease.

American Resources Management Corp., 36 IBLA 157 (July 31, 1978)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date.

Shell Oil Co., 36 IBLA 253 (Aug. 15, 1978)

An oil and gas lease expires at the end of its primary term where there has not been compliance with any of the provisions of the Mineral Leasing Act under which a further extension of the lease may be granted.

Erna M. Groth, 37 IBLA 224 (Oct. 16, 1978)

A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law and not by the action of any official if the annual rental is not paid on or before the due date. Submission of a rental check without identifying the lease number precluded the Bureau of Land Management from accepting the check as payment for the lease, and a lease is properly held to terminate in the absence of a timely identified payment of the rental.

An oil and gas lease terminated by operation of law for failure to pay rental timely may be reinstated only where, among other things, it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Mailing a properly identified rental check after the due date does not constitute reasonable diligence, nor is there justification for the late payment because an unidentified

check was received by BLM prior to the due date but returned for identification of the account to be credited.

S. Delos Champaign, 37 IBLA 377 (Nov. 6, 1978)

"Payment." A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the due date. A check for rental does not constitute payment until it is received at the proper office.

The applicable statute limits the authority of the Department of the Interior in reinstating leases only to those situations where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Reasonable diligence normally requires sending or delivering payment to the proper office sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. Late payment of the rental is justifiable only where failure to make timely payment is the result of causes beyond the control of the lessee, and simple inadvertence in mailing the payment to the wrong office does not justify failure to send timely payment to the proper office.

Gretchen Capital, Ltd., 37 IBLA 392 (Nov. 8, 1978)

"Reasonable diligence." Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the Bureau of Land Management and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. § 188(c) (1976) because there has been reasonable diligence on the part of lessee.

Lillie Belle Higgins, 38 IBLA 254 (Dec. 8, 1978)

Where checks submitted in payment of annual rental on oil and gas leases are returned by the drawee bank as uncollectible because they are postdated, and there has been no bank error, no tender or payment of annual rental has been made. In the absence of any other payment prior to the anniversary date, the leases terminate automatically by operation of law.

Benjamin T. Franklin, 38 IBLA 291 (Dec. 18, 1978)

Upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law.

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

A lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions

OIL AND GAS LEASES--Continued

TERMINATION--Continued

in paying the rental fee. Instances of simple forgetfulness, inadvertence, ignorance of the regulations, reliance on BLM courtesy notices, and similar occurrences do not excuse diligence.

Ronald C. and Mary A. Hill, 38 IBLA 315 (Dec. 19, 1978)

An oil and gas lease issued for a primary term of 10 years on which there is no production will expire by its own terms where the lessee has not commenced drilling operations on the leasehold at the end of the term, and payment of compensatory royalty will not extend the lease where there has been no showing that the leasehold is subject to drainage from wells on an adjoining property.

Webb Resources, Inc., 38 IBLA 330 (Dec. 19, 1978)

An oil and gas lease issued for a primary term of 10 years and extended for 2 years by drilling cannot be extended further by payment of compensatory royalty where there is no showing that the leasehold is suffering drainage from an adjoining tract, and no compensatory royalty has been assessed by the district supervisor under 30 CFR 221.21(c).

Chaparral Resources, Inc., 39 IBLA 269 (Feb. 15, 1979)

A noncompetitive oil and gas lease cannot be extended beyond the end of its primary term by commitment to an approved unit agreement where no actual drilling has been commenced anywhere within the unit on the date the lease is due to expire.

Burton Hancock, 40 IBLA 1 (Mar. 6, 1979)

Upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law.

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. This board has repeatedly held that reasonable diligence has not been exercised where a rental payment is posted at a time that one could not assume delivery before the statutory terminal date of the lease.

Lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee.

Bernard W. Crowe, 40 IBLA 114 (Mar. 27, 1979)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Although deficiencies in an application for assignment of an oil and gas lease may be timely cured, 30 U.S.C. § 187a (1976) specifies the time when an assignment is effective, and no assignment can be approved for a terminated oil and gas lease.

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, despite a partial payment submitted on the basis of a partial relinquishment which is not yet effective.

Even if it were true that termination of an oil and gas lease was in part the result of Bureau of Land Management's failure to act timely on an assignment application, there is no authority either to withhold the effect of termination under 30 U.S.C. § 188(b) (1976) or to reinstate the lease under sec. 188(c), where there has been no payment of the full rental within 20 days after termination.

Reichhold Energy Corp., 40 IBLA 134 (Mar. 29, 1979)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Estate of Kenneth F. Kramer, 40 IBLA 147 (Mar. 29, 1979)

An oil and gas lease which is in its extended term because of production terminates when production ceases unless pursuant to 30 U.S.C. § 226(f) (1976): (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in producing status at least within 60 days of receipt of notice to do so.

Where production has ceased on an oil and gas lease extended by production, and the record is unclear whether the conditions prescribed by 30 U.S.C. § 226(f) (1976) precluding termination of the lease have occurred, the case will be remanded to the Bureau of Land Management to reconsider with the Geological Survey if the lease has terminated, including a determination whether the lessee began reworking or drilling operations within 60 days after cessation of production and diligently prosecuted such operations before attaining production as asserted by him on appeal. A hearing should be held, if necessary, to resolve disputed facts.

Vern H. Holinder and Julienne J. Holinder, 40 IBLA 164 (Apr. 3, 1979)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

The provision in a unit agreement allowing suspension of production requirements for unavoidable delays does not supplant the lessee's responsibility to comply with the procedure set out in the regulation for obtaining a suspension. A written application for suspension must be filed in triplicate with the area oil and gas supervisor prior to the expiration of the leases.

Suspension of production requirements for leases on which there are no wells capable of producing in paying quantities must be approved by the Secretary; this authority is not delegated to other officers below the Secretarial level.

Where the Geological Survey, in making its decision, has reviewed the same information submitted on appeal to the Board of Land Appeals to show that there was a well capable of producing oil or gas in paying quantities on the date the lease expired, and there are no disputed facts, but only a dispute on the proper application of the law to those facts and legal interpretations, a hearing is not warranted in the case.

"A well capable of producing oil or gas in paying quantities." The provision in 30 U.S.C. § 226(f) (1976) referring to a well capable of producing oil or gas in paying quantities refers to a well which is actually in physical condition to produce a sufficient quantity of oil or gas to yield a reasonable profit over and above the costs of operating the well and marketing the product. A satisfactory test of a well to establish its capability as of the termination date is necessary. Evidence which only supports inferences is not sufficient, nor is a showing only of a potential prospect for profitable operation at some future time.

American Resources Management Corp., 40 IBLA 195 (Apr. 5, 1979)

An oil and gas lease issued on July 1, 1951, is not controlled by P.L. 83-555, effective July 29, 1954, and the lease therefore does not terminate automatically by operation of law if annual rental is not paid timely, as this law does not apply retroactively to the lease in the absence of written notice from the lessees that they have elected to subject their lease to this law. Rather, the mineral leasing law in effect prior to July 29, 1954, controls, under which the lessees' failure to pay annual rental subjects the lease to cancellation only after BLM gives them 30 days' notice of their failure to pay the rental timely. BLM's decision canceling such lease will be vacated where it did not give the lessees the required notice.

Allied Chemical Corp. et al., 40 IBLA 272 (Apr. 18, 1979)

An oil and gas lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

John A. Steele, Jr., 41 IBLA 49 (May 29, 1979)

An oil and gas lease which is in its extended term because of production terminates when production ceases unless pursuant to 30 U.S.C. § 226(f) (1976): (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in producing status at least within 60 days of receipt of notice to do so.

John S. Feher, 41 IBLA 191 (June 22, 1979)

A hearing is properly ordered where there exist issues of fact the resolution of which will determine whether an oil and gas lease concluding its primary term was converted from rental status to royalty status. Appellant shall have the burden of proof to establish by a preponderance of the evidence (a) that the Dolezal-Government #1 well was capable of producing oil and gas in paying quantities on Oct. 31, 1978, or (b) that there was a discovery of oil or gas in paying quantities on lease W 15891 on Oct. 31, 1978. If either (or both) of these propositions is established, the subject lease was not subject to automatic termination by law for failure to make timely rental payment.

Coronado Oil Co., 42 IBLA 235 (Aug. 22, 1979)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Victor Holz, 42 IBLA 284 (Aug. 27, 1979)

Where the failure to pay rental on or before the anniversary date of a lease is attributable to a breakdown in mailing procedures within the parent company of the lessee, neither reasonable diligence nor justification is shown to support a petition for reinstatement.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2) (1977).

Fuel Resources Development Co., 43 IBLA 19 (Sept. 11, 1979)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

Annie Mae Buckley, 44 IBLA 99 (Nov. 20, 1979)

An oil and gas lease in its extended term because of the termination of an approved unit plan to which it was committed, on which lease there is no well capable of production in paying quantities, terminates automatically by operation of law where the annual rental is not paid on or before the anniversary date of the

OIL AND GAS LEASES--Continued

TERMINATION--Continued

lease. The pendency of an appeal regarding the termination date of the extension does not excuse the failure to maintain the lease in good standing by timely payment of the annual rental.

There is no authority to suspend an oil and gas lease terminated by operation of law for failure to pay the annual rental on or before the anniversary date of the lease where no application for suspension was filed before the lease terminated.

Tenneco Oil Co., Cordillera Corp., 44 IBLA 171 (Nov. 30, 1979)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities will automatically terminate on the anniversary date of the lease upon failure of lessee to pay the minimum annual rental, despite a partial payment submitted on the basis of a partial relinquishment, which was ineffective because not filed by the record title holder pursuant to 43 CFR 3108.1, and despite issuance of a Bureau of Land Management decision subsequent to the anniversary date confirming a decreased annual rental.

D. J. Bradshaw, 44 IBLA 181 (Nov. 30, 1979)

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 2 days before the anniversary date of the lease does not constitute reasonable diligence.

A lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. A lessee's suffering severe, incapacitating injuries during the month before the anniversary date of the lease may constitute proximate cause sufficient to justify late payment of the rental and to warrant reinstatement of the lease.

Norman C. Stroiak, 44 IBLA 188 (Nov. 30, 1979)

A notice of appeal from Geological Survey's failure to approve a communitization agreement must be filed within 30 days after appellant is served with the decision thereof or the doctrine of administrative finality generally bars consideration of the same issue in a later appeal.

Where approval of a communitization agreement has been denied, and other authorization is not present, production from an oil and gas lease within a State spacing unit cannot be attributed to another Federal lease, and absent production that lease expires at the end of its term.

Gulf Oil Corp., 44 IBLA 292 (Dec. 26, 1979)

OIL AND GAS LEASES--Continued

TWENTY-YEAR LEASES

Where a 20-year oil and gas lease, committed to an approved unit agreement prior to the end of its initial term in 1962 and thereby extended beyond the original term, is eliminated from the unit agreement in 1972 and its term is automatically extended for 2 years and so long thereafter as oil or gas is produced in paying quantities, such a lease is not eligible for further 10-year renewals and an application for such a renewal filed in 1974 is properly rejected.

Marathon Oil Co., Chevron Oil Co., 19 IBLA 1 (Feb. 20, 1975)

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee. Such lease is not held by production and terminates automatically on its final anniversary date notwithstanding the existence of a producing well on the leasehold.

Peacock Oil Co., Inc., Twin Arrow, Inc., 29 IBLA 74 (Feb. 23, 1977)

A 10-year renewal of a 20-year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee, pursuant to 43 CFR 3107.8-2; however, the language of the regulation is permissive and a delay in filing a renewal application may be excused in the presence of special circumstances.

Peacock Oil Co., Inc., Twin Arrow, Inc., 30 IBLA 103 (May 2, 1977)

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1976).

Anne Burnett Tandy et al., 33 IBLA 106 (Dec. 16, 1977)

Texaco, Inc., 33 IBLA 296 (Jan. 10, 1978)

Texaco, Inc., 40 IBLA 294 (Apr. 27, 1979)

To obtain a renewal of a 20-year oil and gas lease the lessee should file an application for renewal at least 90 days prior to the expiration of the lease term. However, this requirement is permissive and a delay in filing the application may be excused in the presence of special circumstances.

Homestake Oil and Gas Co., 40 IBLA 262 (Apr. 16, 1979)

UNIT AND COOPERATIVE AGREEMENTS

Where a 20-year oil and gas lease, committed to an approved unit agreement prior to the end of its initial term in 1962 and thereby extended beyond the original term, is eliminated from the unit agreement in 1972 and its term is automatically extended for 2 years and so long thereafter as oil or gas is produced in paying quantities, such a lease is not eligible for further 10-year renewals and an application for such a renewal filed in 1974 is properly rejected.

Marathon Oil Co., Chevron Oil Co., 19 IBLA 1 (Feb. 20, 1975)

An oil and gas lease in a unit area will be held to have been extended by diligent drilling on the anniversary date even though the lease was not properly committed to the unit, where the parties in interest and the Department had assumed that the land was properly committed and there are no intervening rights to the leasehold.

Woods Petroleum Corp., 23 IBLA 12 (Nov. 25, 1975)

"Area covered by unit plan" and "Lands committed and not committed to unit plan." When an oil and gas lease is committed to a cooperative or unit plan of development or operation approved by the Secretary, and when such plan unitizes less than all horizons or depths of said lease, the "area covered" by the plan consists only of the unitized depths or horizons and excludes any depths or horizons not unitized. Such a lease necessarily "embraces lands that are in part within and in part outside of the area covered by such plan" and must be "segregated into separate leases as to the lands committed and the lands not committed." "Lands committed" can only refer to all unitized depths or horizons; "lands not committed" refers to all non-unitized depths. 30 U.S.C. § 226(j) (1970).

Amoco Production Co., 24 IBLA 227 (Mar. 24, 1976)

In order to support extension of an oil and gas lease on the basis of production within a pre-existing unit to which the lease was not previously committed, the lessee must reach an agreement with the parties to the unit agreement and the unit operating agreement in accordance with the procedures for subsequent joinder outlined therein and submit evidence of such agreement for approval of the Oil and Gas Supervisor, United States Geological Survey, prior to expiration of the lease. The mere sending of notice by the lessee to the Bureau of Land Management announcing his intention to commit his lease to an existing unit agreement is not sufficient.

Duncan Miller, 25 IBLA 125 (June 7, 1976)

Unleased Federal lands ordinarily are not committed to unit agreements unless by a specific action of a duly authorized officer of the Department, and a tract of such land is not committed to a unit agreement in spite of the fact that the tract is included in the area described in sec. 2 of the agreement as the unit area, is shown on the map attached to the agreement as Exhibit A to be within the boundaries of the unit area, and is shown on Exhibit B of the agreement as being unleased Federal land.

High Crest Oils, Inc. (now Tricentrol United States, Inc., Through Change of Name), 29 IBLA 97 (Feb. 23, 1977)

A Bureau of Land Management decision extending the lease term of an oil and gas lease for 2 years following the termination of the unit agreement of which the lease was a part is premature, where the lessee has appealed the Geological Survey's determination of the effective date of termination of the unit agreement. The Bureau of Land Management decision will be set aside and the case remanded to await the final outcome of the lessee's appeal of the Geological Survey determination.

Tenneco Oil Co., 29 IBLA 157 (Mar. 7, 1977)

A determination of an Area Oil and Gas Supervisor, Geological Survey, that a subsequent joinder could not effectuate commitment of an oil and gas lease to a unit agreement prior to expiration of the lease is properly set aside by the Director, Geological Survey, as not being within the authority of the Area Oil and Gas Supervisor to determine.

An oil and gas lessee, who files the necessary subsequent joinder documents with the Area Oil and Gas Supervisor, Geological Survey, in accordance with the subsequent joinder procedures outlined in the unit agreement, will have his lease committed to the unit as of the date of filing with the Area Oil and Gas Supervisor for the purpose of extension of the lease on the basis of production within the unit. However, the commitment does not become effective for determining the benefits and obligations under the unit agreement, as to the parties to the agreement, until the first day of the month following the filing.

Bruce Anderson, 30 IBLA 179 (May 19, 1977)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date, even though the lease may also have production at that time.

Rio Blanco Natural Gas Co., 30 IBLA 191 (May 19, 1977) 84 I.D. 198

By the terms of the mineral leasing laws, unit agreement, and by regulation, unitized oil and gas leases issued after Sept. 2, 1960, which reach the end of a 2-year extended term by drilling expire by operation of law if there is not production of oil or gas in paying quantities within the unit at that time.

The U.S. Geological Survey is the technical expert of the Department of the Interior in matters concerning geologic evaluations. The Bureau of Land Management is entitled to rely on mineral determinations of Survey, such as qualification of a test well as a discovery well defined by a unit agreement, in the absence of a clear and definite showing of error.

Corrine Grace, 30 IBLA 296 (June 1, 1977)

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1976).

Anne Burnett Tandy et al., 33 IBLA 106 (Dec. 16, 1977)

Texaco, Inc., 33 IBLA 296 (Jan. 10, 1978)

Texaco, Inc., 40 IBLA 294 (Apr. 27, 1979)

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit

UNIT AND COOPERATIVE AGREEMENTS--Continued

a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Manhattan Resources, Inc., 34 IBLA 346 (Apr. 26, 1978)

The amendment to 30 U.S.C. § 226(j) (1970) by the Mineral Leasing Act Amendments of 1960 does not require segregation into separate leases of any lease committed before July 29, 1954, to a unit agreement which covers land within and land outside the area covered by the plan.

Where a unit agreement provides that royalty on production shall be paid at the rate set forth in the individual lease terms, and the lease provides that no royalty shall be due on gas used for production purposes, it is proper to deduct the amount of gas used for production purposes on a lease from the gross allocation of gas to that lease before making the computation of royalty due to the United States.

Amoco Production Co. (On Reconsideration), 35 IBLA 43 (May 9, 1978)

Where only a portion of an oil and gas lease is committed to an approved unit agreement sec. 17(j) of the Mineral Leasing Act, *as amended*, mandates the segregation of the noncommitted lands into a separate lease.

American Resources Management Corp., 36 IBLA 157 (July 31, 1978)

Before issuance of a competitive oil and gas lease for land within the area of an approved unit agreement, it is proper to require the successful bidder to file evidence that he has entered into an agreement with the unit operator for development of the land in the lease under the terms and provisions of the approved unit agreement or to file a statement giving satisfactory reasons for failure to enter such agreement.

Where high bidder for a competitive oil and gas lease within the area of an approved unit agreement fails to file evidence showing joinder to the unit agreement or to submit satisfactory reasons for failure to enter into agreement with the unit operator, it is proper to reject his bid and to refund the bonus payment tendered with the bid.

Gordon H. Barrows, 36 IBLA 160 (July 31, 1978)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date.

A unitized oil and gas lease is entitled to an extension for 2 years where production testing operations are being conducted on the unit well on the expiration date of the lease. Such testing qualifies as "actual drilling operations" as defined by 43 CFR 3107.2-1 which includes not only the physical drilling of a well, but the testing, completing, or equipping of such well for production of oil or gas.

Shell Oil Co., 36 IBLA 253 (Aug. 15, 1978)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

Where a Federal oil and gas lessee commits a portion of his lease to a proposed unit agreement, thereafter assigns all that committed portion to another, which assignment is approved, and subsequently the proposed unit is approved by the Geological Survey, the lessee is not entitled to a 2-year extension under 30 U.S.C. § 226(j) (1970), for the retained portion of the lease.

E. M. Tully, 37 IBLA 62 (Sept. 18, 1978)

A noncompetitive oil and gas lease cannot be extended beyond the end of its primary term by commitment to an approved unit agreement where no actual drilling has been commenced anywhere within the unit on the date the lease is due to expire.

Burton Hancock, 40 IBLA 1 (Mar. 6, 1979)

It is not proper to deny a creditable request for approval of unavoidable delay time under sec. 16 of the Santa Ynez Unit Agreement, even though the Geological Survey considers the unit agreement extended by diligent drilling operations.

Exxon Co., U.S.A., 41 IBLA 118 (June 13, 1979)

"Paying Quantities." The term "paying quantities," used in the Brady (Deep) Unit Agreement to determine whether or not a participating area of a unit should include additional tracts where the existence of hydrocarbons in paying quantities is disputed, refers to cost of drilling and production plus a reasonable profit.

The U.S. Geological Survey is the technical expert of the Department in matters concerning geologic evaluation of oil and gas lease production, and the Secretary is entitled to rely on the Survey's determinations, as to the extent of the participating area of a unit, absent a clear showing of error.

Amoco Production Co., 41 IBLA 348 (July 11, 1979)

An oil and gas lease is properly extended for 2 years pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3 where prior to the expiration of the primary term of the lease, the lease is committed to an approved cooperative unit or plan and actual drilling operations are being conducted on behalf of the lease within the unit plan. For the purpose of qualifying for the extension, the determinative date of approval of the unit agreement is the effective date of the approved agreement rather than the actual date it is signed by U.S. Geological Survey.

Integrity Oil and Gas Co., 42 IBLA 222 (Aug. 22, 1979)

Where Geological Survey and one of two parties to a compulsory unitization of two outer continental shelf oil and gas leases request a remand of a Survey decision for further consideration, and certain issues raised on appeal would appropriately be better first considered by Survey, the case will be remanded to Survey. In the circumstances, a request to stay implementation of Survey's prior decision may be granted by the Board unless and until Survey acts upon the request when it reconsiders the case.

Sun Oil Co., 42 IBLA 254 (Aug. 23, 1979)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

Where the U.S. Geological Survey has determined from available geologic and other data that a participating area of 1,000 acres is the proper size for a producing well under an approved unit agreement, this Board may rely upon reports of the Survey setting forth the conclusions reached without examining the technical data upon which the reports were based.

A determination by the U.S. Geological Survey that certain land is within the participating area of a producing oil or gas well established pursuant to an approved unit agreement will not be set aside where it is not arbitrary or capricious and is supported by competent evidence, and the appellant has not demonstrated by a clear and definite showing that the determination was in error.

Margaret D. Okie et al., 43 IBLA 326 (Oct. 29, 1979)

WELL CAPABLE OF PRODUCTION

An oil and gas lease on which there is no well capable of production in paying quantities will terminate by operation of law if the annual rental payments are not submitted on or before the anniversary date. A well capable of production in paying quantities on the anniversary date is one which can actually produce enough oil to exceed the cost of its extraction. Neither the production of water nor the production of meager quantities of oil, albeit with hopes for paying production at some time in the future, constitute production in paying quantities on the anniversary date of the lease.

The Polumbus Corp., 22 IBLA 270 (Oct. 30, 1975)

An oil and gas lease will expire by operation of law at the end of its primary term unless oil or gas is being produced in paying quantities at that time or actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted, thereby entitling the lessee to an extension of the lease. A once productive well which ceases its productive capability during the initial term will not prevent expiration of the lease.

Bajac Industries, Inc., 26 IBLA 202 (Aug. 11, 1976)

An oil and gas lease in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no reworking or drilling operations are begun within 60 days after cessation of production. In this situation the lessee is not entitled to written notice and 60 days to place the well in a producing status.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Universal Resources Corp. et al., 31 IBLA 61 (June 23, 1977)

OIL AND GAS LEASES--Continued

WELL CAPABLE OF PRODUCTION--Continued

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Manhattan Resources, Inc., 34 IBLA 306 (Apr. 26, 1978)

An oil and gas lease which is in its extended term because of production terminates when production ceases unless pursuant to 30 U.S.C. § 226(f) (1976): (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in producing status at least within 60 days of receipt of notice to do so.

Vern H. Bolinder and Julienne J. Bolinder, 40 IBLA 164 (Apr. 3, 1979)

John S. Pehar, 41 IBLA 191 (June 22, 1979)

Suspension of production requirements for leases on which there are no wells capable of producing in paying quantities must be approved by the Secretary; this authority is not delegated to other officers below the Secretarial level.

Where the Geological Survey, in making its decision, has reviewed the same information submitted on appeal to the Board of Land Appeals to show that there was a well capable of producing oil or gas in paying quantities on the date the lease expired, and there are no disputed facts, but only a dispute on the proper application of the law to those facts and legal interpretations, a hearing is not warranted in the case.

"A well capable of producing oil or gas in paying quantities." The provision in 30 U.S.C. § 226(f) (1976) referring to a well capable of producing oil or gas in paying quantities refers to a well which is actually in physical condition to produce a sufficient quantity of oil or gas to yield a reasonable profit over and above the costs of operating the well and marketing the product. A satisfactory test of a well to establish its capability as of the termination date is necessary. Evidence which only supports inferences is not sufficient, nor is a showing only of a potential prospect for profitable operation at some future time.

American Resources Management Corp., 40 IBLA 195 (Apr. 5, 1979)

A hearing is properly ordered where there exist issues of fact the resolution of which will determine whether an oil and gas lease concluding its primary term was converted from rental status to royalty status. Appellant shall have the burden of proof to establish by a preponderance of the evidence (a) that the Dolezal-Government #1 well was capable of producing oil and gas in paying quantities on Oct. 31, 1978, or (b) that there was a discovery of oil or gas in paying quantities on lease W 15891 on Oct. 31, 1978. If either (or both) of these propositions is established, the subject

OIL AND GAS LEASES--Continued

WELL CAPABLE OF PRODUCTION--Continued

lease was not subject to automatic termination by law for failure to make timely rental payment.

Coronado Oil Co., 42 IBLA 235 (Aug. 22, 1979)

OIL SHALE

WITHDRAWALS

A decision of the Bureau of Land Management rejecting a Native allotment application because the land is within an oil shale withdrawal will be set aside and remanded for further consideration where the Secretary of the Interior has directed the Geological Survey to review its mineral classifications in Alaska and the applicant requests an opportunity to present evidence to dispute the classification.

Raymond Paneak, 19 IBLA 68 (Feb. 25, 1975)

Once the U.S. Geological Survey has classified certain lands as containing deposits of oil shale, those lands are considered to be withdrawn by Executive Order No. 5327. In order to challenge such a classification, a clear showing of error is required.

An application for a phosphate prospecting permit is properly rejected upon a determination that lands applied for are withdrawn as oil shale lands by Executive Order No. 5327.

Thomas E. Gaynor, 21 IBLA 178 (July 25, 1975)

An application for a phosphate prospecting permit is properly rejected when the lands applied for have been classified as containing deposits of oil shale. The lands are thereby subjected to the withdrawal from leasing and other disposal imposed by Executive Order No. 5327. Rejection of the application is required even though the application was filed prior to the oil shale classification and withdrawal.

Thomas E. Gaynor, 24 IBLA 320 (Apr. 20, 1976)

Oil shale withdrawals administered by the Department of the Interior have reserved water rights for the purposes of investigation, examination and classification of those lands. Water is not reserved for actual oil shale development.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS

GENERALLY

There are no reserved water rights on the revested Oregon and California Railroad lands and the Coos Bay Wagon Road lands, the "O&C" lands.

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS--Continued

GENERALLY--Continued

FLPMA, the Taylor Grazing Act, the O&C Act, and other statutes permit the United States to appropriate water for the diverse purposes found in the various statutes.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

SUSTAINED YIELD UNITS

Where one objects to the Bureau of Land Management's decision to offer a certain tract of timber for sale on the grounds that an environmental impact statement for the single planned timber sale has not been prepared and that such a sale would violate the sustained yield provisions of the O&C Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1970), the Bureau decision will be upheld when the objecting party fails to provide any evidence to support its contentions and a program environmental impact statement for the sustained yield unit which includes the parcel in question is in the process of being prepared.

Headwaters, 33 IBLA 91 (Dec. 16, 1977)

TIMBER SALES

A proposed Federal timber sale does not violate the principle of multiple use embodied in the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), where it involves Oregon and California revested land committed by the Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1976), to dominant use management for commercial forestry.

Elaine Mikels et al., 44 IBLA 51 (Nov. 19, 1979)

OUTER CONTINENTAL SHELF LANDS ACT

(*See also* Oil and Gas Leases--if included in this Index.)

GENERALLY

In interpreting provisions of State leases which have been validated under sec. 6 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1335 (1970), the Department will give great weight to judicial and administrative interpretations rendered by officials of that State. Where, however, there is a conflict of opinion between State officials as to the proper interpretation of a provision of a State lease, the Department of the Interior will independently interpret that section, applying the general rules of contract construction.

Ocean Drilling & Exploration Co., Chevron Oil Co., 21 IBLA 137 (July 15, 1975)

In order to constitute a clear and definite offer, a bid for an outer continental shelf oil and gas lease must adequately identify the tract which is the subject of the bid.

It is not the responsibility of Bureau of Land Management employees to decipher ambiguous bids for outer continental shelf oil and gas leases in order to save the bidder from the consequences of his own negligence. A bid which was apparently intended for one tract and contains data appropriate for that tract, but identifies a different tract as the subject of the bid, is

OUTER CONTINENTAL SHELF LANDS ACT--Continued

GENERALLY--Continued

properly considered, and rejected as too low, for the identified tract.

A rejected bid in an outer continental shelf oil and gas lease sale may be reconsidered and accepted when it is in the public interest to do so. The essential elements in allowing such a reconsideration are the fairness and impartiality of the sale toward all bidders. In a situation where a bid was initially rejected as too low for the tract identified in the bid and the bidder immediately requests reconsideration because he intended to bid for a different tract, where the tract number stated in the bid corresponds to the block number of the intended tract, where all other relevant data in the bid corresponds to the intended tract and only to the intended tract, and where no other person submitted a bid for the intended tract, it is proper to reconsider the bid to determine if it is in the public interest to accept the bid for the intended tract.

Alaska Oil and Minerals Corp., 29 IBLA 224
(Mar. 23, 1977) 84 I.D. 114

OIL AND GAS LEASES

"Production." "Production" as used in all Federal oil and gas leases includes all oil and gas withdrawn from a reservoir.

In the absence of a specific statutory bar, such as is found in secs. 18 and 19 of the Mineral Leasing Act of 1920, royalty is due in the "amount or value" of all production from a Federal oil and gas lease, including vented and flared gas and gas or oil leaked, spilled or used in producing operations.

An assessment greater than the normal royalty charge may be required for oil and gas that are wasted.

Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clause, M-36888 (Oct. 4, 1976) 84 I.D. 54

"Production." Oil or gas that is wasted is in a category by itself, distinctly separable from "production," when it is oil or gas that is lost on the surface or in the subsurface through the negligence of the lessee, *i.e.*, without the specific sanction of the supervisor.

The loss through waste to the lessor compensable under 30 CFR 250.20 is either the royalty or the full value and the choice between them is a matter which is committed to the sound exercise of the supervisor's discretion.

Computation of Moneys Due the United States on Oil and Gas Lost as a Result of Pennzoil's Blowout, M-36888 (Supp.) (Jan. 19, 1977) 84 I.D. 64

The interpretation of the Mineral Leasing Act of 1920 set forth in the Oct. 4, 1976, *Solicitor's Opinion* (M-36888) is compelled by the statute.

Terms of an oil and gas lease inconsistent with the statute are equally as invalid as a regulation which operates to create a rule out of harmony with the statute.

A lessee gains no rights through a lease which could not be bestowed lawfully, since regulations or lease terms inconsistent with the statute are invalid.

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OIL AND GAS LEASES--Continued

The involuntary invalidation of a lease term does not amount to *pro tanto* cancellation of the lease.

The Oct. 4, 1976, *Solicitor's Opinion* (M-36888), in effect, found that the Secretary, by permitting exemptions from royalty requirements for oil and gas used for production purposes or unavoidably lost, was alienating the royalty interest of the United States on certain leases without authority to do so.

Court cases indicate that it is in the Secretary's discretion to apply the corrected interpretation of the statutes in the collection of additional royalty retroactively or prospectively based on equitable considerations.

The Secretary is limited in the exercise of this authority only by the rule of estoppel where the application of the corrected interpretation of law threatens to work a serious injustice and if the public's interest would not be unduly damaged by the imposition of estoppel.

Effect of Oct. 4, 1976, Solicitor's Opinion M-36888, M-36888 (Supp. II) (Mar. 9, 1977) 84 I.D. 171

The Department of the Interior has the authority to issue orders to oil and gas lessees to protect all of the natural resources of the Continental Shelf. An order which requires lessees to shut in wells during welding or burning operations will be sustained on appeal as not being arbitrary or unjustified where the record shows that a number of companies had followed the practice even when it was not required, where the order is not so prohibitive as to effect a *pro tanto* cancellation of the lease, and where departures from the order may be granted in certain situations.

Exxon Corp., 36 IBLA 185 (Aug. 1, 1978) 85 I.D. 347

A request for refund of excess payments under 43 U.S.C. § 1339 (1970) must be made as the limitation in the statute provides, within 2 years from the date such payments are actually made.

Phillips Petroleum Co., 39 IBLA 393 (Mar. 2, 1979)

It is not proper to deny a creditable request for approval of unavoidable delay time under sec. 16 of the Santa Ynez Unit Agreement, even though the Geological Survey considers the unit agreement extended by diligent drilling operations.

Exxon Co., U.S.A., 41 IBLA 118 (June 13, 1979)

Where the holder of an oil and gas lease on the Outer Continental Shelf has filed a suit in a Federal district court to recover certain royalties paid under his lease, the Board of Land Appeals will affirm a decision of the Director, Geological Survey, holding in abeyance the lessee's request for a refund while the suit is pending.

Tenneco Oil Co., 41 IBLA 195 (June 22, 1979)

OPERATING PROCEDURES

The Department of the Interior has the authority to issue orders to oil and gas lessees to protect all of the natural resources of the Continental Shelf. An order which requires lessees to shut in wells during welding or burning operations will be sustained on appeal as not being arbitrary or unjustified where the record

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OPERATING PROCEDURES--Continued

shows that a number of companies had followed the practice even when it was not required, where the order is not so prohibitive as to effect a *pro tanto* cancellation of the lease, and where departures from the order may be granted in certain situations.

Exxon Corp., 36 IBLA 185 (Aug. 1, 1978)   85 I.D. 347

REFUNDS

A request for refund of excess payments under 43 U.S.C. § 1339 (1970) must be made as the limitation in the statute provides, within 2 years from the date such payments are actually made.

Phillips Petroleum Co., 39 IBLA 393 (Mar. 2, 1979)

STATE LEASES

Generally

In interpreting provisions of State leases which have been validated under sec. 6 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1335 (1970), the Department will give great weight to judicial and administrative interpretations rendered by officials of that State. Where, however, there is a conflict of opinion between State officials as to the proper interpretation of a provision of a State lease, the Department of the Interior will independently interpret that section, applying the general rules of contract construction.

The provisions of those leases issued by the State of Louisiana on the 1948 lease form and which have been validated under sec. 6 of the Outer Continental Shelf Lands Act do not prohibit the allowance by the Oil and Gas Supervisor of a reasonable deduction of barging transportation costs from the field to the point of the first market for the production from the lease.

Ocean Drilling & Exploration Co., Chevron Oil Co., 21 IBLA 137 (July 15, 1975)

Leases issued by the State of Texas for offshore oil and gas deposits which have been validated under sec. 6 of the Outer Continental Shelf Lands Act do not prohibit, for royalty purposes, allowance by the Geological Survey of a reasonable deduction of barging transportation costs for crude oil production from the field to the point of the first market onshore.

C & K Petroleum, Inc., 27 IBLA 15 (Sept. 17, 1976)

The royalty provisions of a State lease validated under sec. 6 of the Outer Continental Shelf Lands Act will govern the determination of the royalty due to the United States.

The royalty provisions on a State of Louisiana 1942 lease form subsequently validated under sec. 6 of the Outer Continental Shelf Lands Act provide either for (1) delivery of royalty oil in kind to the lessor free of expense with delivery understood as being made when the oil has been received by the first purchaser or, (2) at the option of the lessee, payment of the value of the oil, with certain express disallowances, including no deduction for transportation charges. Constructive delivery of in-kind royalty must be authorized and accepted by the lessor to constitute a payment of royalty. The delivery-in-kind provision does not authorize the lessee to act as agent of the United

OUTER CONTINENTAL SHELF LANDS ACT--Continued

STATE LEASES--Continued

Generally--Continued

States, and is not applicable where the lessee has not notified Geological Survey of any purported constructive delivery of oil to the first purchaser and Survey has not accepted such constructive delivery. Therefore, the second provision is applicable which expressly precludes deductions of transportation costs.

Superior Oil Co., 31 IBLA 127 (June 30, 1977)

UNIT PLANS

Where Geological Survey and one of two parties to a compulsory unitization of two outer continental shelf oil and gas leases request a remand of a Survey decision for further consideration, and certain issues raised on appeal would appropriately be better first considered by Survey, the case will be remanded to Survey. In the circumstances, a request to stay implementation of Survey's prior decision may be granted by the Board unless and until Survey acts upon the request when it reconsiders the case.

Sun Oil Co., 42 IBLA 254 (Aug. 23, 1979)

PATENTS OF PUBLIC LANDS

GENERALLY

The Recreation and Public Purposes Act, and the pertinent regulations thereunder, require that a grantee of land under the Act must develop the land in accordance with the specified uses proposed in the patent application within a reasonable time following the date of issuance of patent.

Failure over a 17- or 18-year period to develop land patented under the Recreation and Public Purposes Act in accordance with the specified uses proposed in the patent application and set out in the patent is a violation of the condition in the patent which provides that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

Clark County School District, 18 IBLA 289 (Jan. 6, 1975)   82 I.D. 1

City of Monte Vista, Colorado, 22 IBLA 107 (Sept. 22, 1975)

Sec. 6(b) of the Alaska Statehood Act does not require that patents issued to the State include a proviso that the conveyed lands are vacant, unappropriated, and unreserved, and do not affect any valid existing claim, location or entry under the laws of the United States. The Department assures compliance with this provision by excluding from selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that adequate notice be given to all other persons claiming an interest in the selected land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975)   82 I.D. 174

Title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, and the State shall succeed to the position of the United States as lessor under such lease.

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

The Recreation and Public Purposes Act, and the regulations thereunder, do not authorize additional payment for the issuance of a supplemental patent (which voids an earlier patent's reversionary provision) as an alternative to forfeiture for noncompliance with the Act's provision that land patented under the Act only be used for an established or definitely proposed public project within a reasonable time following issuance of patent. The Department can alienate interests in public lands only within the limits authorized by law; therefore, issuance of a supplemental patent which eliminates the Act's mandatory reversionary provision is impermissible.

The Department of the Interior is not estopped from denying the legality of a payment in lieu of forfeiture provision inserted in a Recreation and Public Purposes Act patent when such denial works no serious injustice against the patentee and implementation of the provision would harm the public interest by divesting the Government of all jurisdiction over the patented land, thus, precluding enforcement of the Recreation and Public Purposes Act requirement that lands patented under the Act be devoted to a definitely proposed project for the benefit of the public.

Okanogan County Public Utility, District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

An application for patent to school lands in place, pursuant to 43 U.S.C. § 871a (1970), which requests an exclusion of the right-of-way granted under the Act of July 1, 1862, *as amended*, July 2, 1864, must be rejected. Such a patent must be issued "subject to" the right-of-way.

State of Wyoming, 27 IBLA 137 (Sept. 29, 1976)
83 I.D. 364

In the absence of legislation by Congress, a patent from the United States does not convey an implied easement by way of necessity across public land.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976)
83 I.D. 518

A grantee's failure to develop for an unreasonable period of time (over 19 years) lands patented under the Recreation and Public Purposes Act constitutes a violation of the reversionary clause in the patent which states that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

Clark County, Nevada, 28 IBLA 210 (Dec. 8, 1976)

The Secretary of the Interior is not authorized to issue a patent to a mining claim until the requirements of the law have been met.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

In determining what land is conveyed under patents or grants of public land bordering a meandered watercourse, the general rule is that the waterline itself, not the meander line, constitutes the boundary. There is an exception where the meander line may constitute the boundary between lands omitted from the survey and the watercourse if fraud or gross error is shown in the survey. This exception is only applicable to limit the boundary of the surveyed lots on the side of the watercourse where the omitted land is shown. It does not apply to a lot on the opposite side of the watercourse from the omitted land so as to pass title to the omitted land with title to the lot on the opposite side. The waterline would remain the actual boundary of that lot.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

Where an entryman has mistakenly applied for and received a patent on one parcel of land which was not the land he actually occupied, he is not entitled to receive a patent on the land actually occupied by virtue of the fact that the statutes of limitation on the issuance and cancellation of patents has run.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

Issuance of a certificate of allotment vests full title to the parcel concerned in the allottee, notwithstanding the fact that the Department retains the right to approve a subsequent sale of the parcel by the allottee.

State of Alaska, 35 IBLA 140 (May 22, 1978)

"An Act granting public lands to the town of Silverton, Colorado, for public park purposes" (43 Stat. 980, Feb. 25, 1925).

The above Act and the patent issued in accordance therewith require that the lands granted be used for public park purposes only, and the town's attempt to lease a portion of the lands for the construction of camper sites does not violate the Act and patent since the use of a limited part of the patented land for camper sites is consistent with recreational and public park purposes.

Town of Silverton, 35 IBLA 183 (May 23, 1978)
85 I.D. 140

Where a patent has been issued under the Recreation and Public Purposes Act of June 14, 1926, *as amended*, 43 U.S.C. § 869 *et seq*. (1970), pursuant to a plan of development, and that plan is modified with the consent of the Bureau of Land Management, the failure to comply with the original plan is excused.

The issuance of a patent creates a presumption that all requisite steps and requirements of law and Departmental regulations have been satisfied.

Even if there were a mistake in the issuance of a patent, such mistake would justify this Department in recommending to the Attorney General that suit be commenced to cancel the patent only where: (1) the Government has an interest in the remedy by reason of its interest in the land; (2) the interest of some party to whom the Government is under obligation has suffered by reason of the patent; (3) the duty of the Government to the people so requires or (4) significant equitable considerations are involved.

Where more than 6 years have passed after the issuance of a patent, suit by the United States to vacate and annul the patent cannot be sustained, 43 U.S.C. § 1166

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

(1970), absent a positive showing of fraud practiced upon the United States.

R. E. Baldwin, 37 IBLA 215 (Oct. 12, 1978)

A grantee's transfer of the property and its subsequent use for a purpose (big game guiding service) other than the one described in the patent (mission parsonage and chapel) without consent of Department of the Interior triggers reversion of the land to the United States.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

An appeal from a decision denying a protest against the issuance of a patent must be dismissed if the patent has been issued, because the Department has no jurisdiction to act further in the matter.

Because issuance of a patent removes the land from Departmental jurisdiction, it is not proper to issue that patent simultaneously with dismissal of a protest against the patent application because such action deprives the protester of his right to review and precludes compliance with 43 U.S.C.A. § 1701(a)(5) (West Supp. 1978) which mandates objective administrative review of initial decisions.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

An entryman may not take advantage of sec. 7 of the Act of Mar. 3, 1891, entitling an entryman to a patent after 2 years from date of issuance of a receiver's receipt when there is no pending contest or protest against the validity of the entry, where he has not shown that preconditions of the Act have been met, *i.e.*, making the final payments required.

United States v. Jack Zemry Boyd, Jr., 39 IBLA 321 (Feb. 27, 1979)

Mere nonuse of land patented under the Recreation and Public Purposes Act is not equivalent to a devotion of the land to an unauthorized use and, of itself, will not cause the title to revert to the United States.

A patent which names as the grantee a fictional, nonexistent person or corporation is a nullity and ineffective for all purposes, and where the invalidity appears by reference to any matter of which judicial notice may be taken, the patent is null and void on its face, and no recourse to a court is necessary to procure its cancellation.

Where the grantee of land under the Recreation and Public Purposes Act enters into an executory contract to convey an interest in a portion of the land to another, who then undertakes to perform his obligation to enter the land and improve it without prior Departmental approval, this constitutes an attempt on the part of the patentee to make an unauthorized transfer of title or control, and title to the entire tract reverts to the United States.

Sky Pilots of Alaska, Inc., 40 IBLA 355 (May 14, 1979)

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

A decision holding that a tract of land has reverted to the United States must be affirmed where the land was patented to a municipality under authority of a special statute which expressly provided that the town shall not have the right to sell or convey any part thereof and that if the land shall not be used as public park it shall revert to the United States, and where the record shows that the municipality conveyed two small parcels to the State and has never used the remainder for park purposes in the intervening 60 years since the patent issued.

City of Okanogan, Washington, State of Washington, 41 IBLA 98 (June 4, 1979)

A decision by the Bureau of Land Management canceling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

Blue Star, Inc., Atomic Western, Inc., Fremont Energy Corp., Ivor Adair, 41 IBLA 333 (July 11, 1979)

AMENDMENTS

An application for the amendment of a patent is properly rejected where the record contains insufficient evidence to show that the entryman entered lands not intended by him as his entry, and where the record fails to show what precaution to avoid error was taken by the entryman at the time of making the original entry, if in fact he intended to enter other lands.

Domenico Tussio et ux., 24 IBLA 141 (Mar. 8, 1976)

The execution of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident of and physically within the land district in which the mining claim is located, is unauthorized, and such an application is invalid. The defect cannot be cured by an amendment signed by the claimant.

Floyd R. Bleak, 26 IBLA 378 (Sept. 9, 1976)

Prior to the enactment of sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior's authority to correct patents could not be exercised to divest the Government's title to land that was withdrawn or reserved at the time of the mistaken entry. Whether sec. 316 authorizes amendment of a patent in such situations is to be determined in the first instance by the BLM.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

EFFECT

The Department of the Interior has neither jurisdiction over nor authority to issue oil and gas leases for lands patented to the State of Alaska.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

PATENTS OF PUBLIC LANDS--Continued

EFFECT--Continued

Although a patent issued pursuant to an Alaska State selection may have been issued by mistake, it vested title in the State and removed from the jurisdiction of this Department the right to inquire into and consider all disputed questions of fact as well as rights in the land.

Thomas Albert, 20 IBLA 338 (June 11, 1975)

Even if a patent issued to a homestead entryman by mistake or inadvertence, it vested title in the patentee and removed from the jurisdiction of this Department the right to decide all disputed questions of fact as well as rights to land.

Basille Jackson, 21 IBLA 54 (June 18, 1975)

Remedy for errors of law, as well as for mistakes of fact, in the issue of a patent to land within the jurisdiction of the Department is a direct proceeding by a bill in equity to correct them.

Administrative Appeal of Ruth Pinto Lewis v. Superintendent of the Eastern Navajo Agency, 4 IBIA 147 (Oct. 3, 1975) 82 I.D. 521

A patent issued under authority of law vests title in the patentee and removes the land from the jurisdiction of the Interior Department.

Nadja Davis Gamble, 23 IBLA 128 (Dec. 23, 1975)

The Bureau of Land Management has the authority to impose a stipulation on an oil and gas lease covering reserved minerals on patented lands, which would require archaeological investigation and excavations by lessee.

General Crude Oil Co., 28 IBLA 214 (Dec. 10, 1976) 83 I.D. 666

The effect of the issuance of a patent, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to remove from the jurisdiction of the Department consideration of all disputed questions concerning rights to the land.

Bernie M. Rogers, 29 IBLA 192 (Mar. 18, 1977)

State of Alaska, 35 IBLA 140 (May 22, 1978)

H. B. Baldwin, 37 IBLA 215 (Oct. 12, 1978)

Albert A. Cushing, Jr., 41 IBLA 41 (May 29, 1979)

Berthlyn Jane Baker, 41 IBLA 239 (June 27, 1979)

Where both an original survey prior to the issuance of a patent and a dependent resurvey after issuance indicate that a homestead patent has issued on land within a national forest, the patent is invalid notwithstanding that the Federal Government may not by means of a second survey affect property rights acquired under an official survey.

Where land on which a valid settlement has been made and maintained according to the law under which it was made, was excepted from the effect of the withdrawal or reservation, occupancy of the land prior to reservation or withdrawal is insufficient to show exception where no filing has been made on the prior occupancy and the prior occupancy was not for homestead purposes.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

The effect of the issuance of a patent is to transfer the legal title from the United States and to remove from the jurisdiction of the Department consideration of all disputed questions concerning rights to the land.

Federal-American Partners, 37 IBLA 330 (Oct. 26, 1978)

A patent which names as the grantee a fictional, nonexistent person or corporation is a nullity and ineffective for all purposes, and where the invalidity appears by reference to any matter of which judicial notice may be taken, the patent is null and void on its face, and no recourse to a court is necessary to procure its cancellation.

Sky Pilots of Alaska, Inc., 40 IBLA 355 (May 14, 1979)

RESERVATIONS

Sec. 6(i) of the Alaska Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all the minerals in the lands so conveyed. The Act does not require that Federal patents to the State include a proviso to the above effect, rather, it is subsequent State conveyances which must contain a reservation for minerals.

Richard W. Bowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

In a patent to public domain land, a reservation for ditches and canals constructed by authority of the United States, pursuant to the Act of Aug. 30, 1890, need not be modified by a reference to the Act of Sept. 2, 1964, *as amended*, 43 U.S.C. § 945a (1970).

Heirs of Carrie Bethel, 29 IBLA 210 (Mar. 22, 1977)

As to gravel, interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether gravel is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 *et seq.* (1970), was not generally intended to give the grantee the right to use the land for mineral development and mineral development was to proceed only under the mineral laws.

"*Ejusdem generis*." The *ejusdem generis* rule of construction may not be invoked to exclude gravel from the scope of a reservation of "all the coal and other minerals" in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), because this rule

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS--Continued

of construction can only be effectively applied where there is a series of specific terms which define a class so that one may construe a general term by reference to that class.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates the Department of the Interior retaining continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

The declaration in the Surface Resources Act, 30 U.S.C. § 611 (1970), that no deposit of common varieties of gravel shall be deemed a valuable mineral deposit within the meaning of the mining laws, was not intended to operate as a conveyance, to holders of patents, of any minerals reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Gravel in a valuable deposit is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

Unsurveyed fast lands, formed by accretion to public land or to lands patented with an oil and gas reservation, riparian to a navigable river and lying within the meander lines of that navigable river, as recorded on the official plat, may be leased provided that a proper offer is received and the other relevant conditions precedent to leasing are met.

Federal law determines the legal characterization of accretions, avulsions, and relictions to land riparian to navigable bodies of water, where title to the land or reserved interests in the land remains in the United States.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

SUITS TO CANCEL

Although a patent issued pursuant to an Alaska State selection may have been issued by mistake, it vested title in the State and removed from the jurisdiction of this Department the right to inquire into and consider all disputed questions of fact as well as rights in the land.

Thomas Albert, 20 IBLA 338 (June 11, 1975)

PATENTS OF PUBLIC LANDS--Continued

SUITS TO CANCEL--Continued

Even if a patent issued to a homestead entryman by mistake or inadvertence, it vested title in the patentee and removed from the jurisdiction of this Department the right to decide all disputed questions of fact as well as rights to land.

Basille Jackson, 21 IBLA 54 (June 18, 1975)

The issuance of a patent creates a presumption that all requisite steps and requirements of law and Departmental regulations have been satisfied.

Even if there were a mistake in the issuance of a patent, such mistake would justify this Department in recommending to the Attorney General that suit be commenced to cancel the patent only where: (1) the Government has an interest in the remedy by reason of its interest in the land; (2) the interest of some party to whom the Government is under obligation has suffered by reason of the patent; (3) the duty of the Government to the people so requires or (4) significant equitable considerations are involved.

Where more than 6 years have passed after the issuance of a patent, suit by the United States to vacate and annul the patent cannot be sustained, 43 U.S.C. § 1166 (1970), absent a positive showing of fraud practiced upon the United States.

H. E. Baldwin, 37 IBLA 215 (Oct. 12, 1978)

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

A patent which names as the grantee a fictional, nonexistent person or corporation is a nullity and ineffective for all purposes, and where the invalidity appears by reference to any matter of which judicial notice may be taken, the patent is null and void on its face, and no recourse to a court is necessary to procure its cancellation.

Sky Pilots of Alaska, Inc., 40 IBLA 355 (May 14, 1979)

PAYMENTS
(See also Accounts--if included in this Index.)

GENERALLY

The authorized officer may not deem an oil and gas rental payment to have been timely filed, pursuant to 43 CFR 1821.2-2(g) if it is received at the State Office when it is not open to the public, even though the payment is presented on the last day in which payment can be made. Such payment is deemed to have been made on the day and hour the office is next open to business, as provided in 43 CFR 1821.2-2(d).

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental on time as required by sec. 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), where 20 minutes before the State Office closes to the public on the last day on which rental can be paid, petitioner instructs by telephone an agent who lives in the vicinity of the State Office to make the payment

PAYMENTS--Continued

GENERALLY--Continued

and the agent who alleges she was delayed by traffic and security measures makes payment after the office is closed to the public. In such circumstances the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Bob Burch, 32 IBLA 93 (Sept. 12, 1977)

Where an oil and gas lease is canceled in part because it was erroneously issued as to that part, there is no authority for the Department to pay to the lessee unrealized anticipated profits or to refund the rental for the portion of the lands retained in the lease. By signing the simultaneous oil and gas drawing card, the offeror agreed to accept a lease for those portions of the tract found by BLM to be available for leasing.

Paul M. Temple, 33 IBLA 98 (Dec. 16, 1977)

Rental payment which arrives at a BLM State Office after normal business hours, as set out in 43 CFR 1821-1(a) and (d), is properly recorded by BLM as received at 10 a.m. the next business day, *per* 43 CFR 1821.2-2(d).

Robert L. Wheeler, 33 IBLA 321 (Jan. 23, 1978)

Payment of the annual rental on an oil and gas lease is not made until a proper form of remittance is received by the appropriate office of the Bureau of Land Management.

Lloyd M. and Adelheid A. Patterson, 34 IBLA 68 (Feb. 22, 1978)

A check tendered prior to the due date of an oil and gas lease annual rental payment, which is properly dishonored by the drawee bank, does not constitute timely payment. But where return of the check results from a confirmed bank error, subsequent collection and payment of the check relates back to the time of the original tender, and payment is timely.

Annual rental payments on oil and gas leases are sent to depositories designated by the Secretary of the Treasury if their location permits the deposit to be hand carried; otherwise, the deposits are mailed to the Denver Branch of the Kansas City Federal Reserve Bank. Washington, D.C., offices of the Bureau of Land Management may send deposits to the Cash Division of the Treasury Department. All checks drawn on foreign banks or foreign branches of United States banks must be sent for deposit to the Cash Division of the Treasury Department.

An oil and gas lease rental payment check returned to the Bureau of Land Management because a Federal Reserve Bank will not accept for collection checks drawn on foreign banks, but which could be collected through the Cash Division of the Treasury Department and would be honored by the drawee bank, is not "uncollectible."

Pipeline Petroleum Corp., 34 IBLA 73 (Feb. 22, 1978)
85 I.D. 70

PAYMENTS--Continued

GENERALLY--Continued

"Payment." Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering his leases, and, until such time as it is received, no "payment" of annual rental has occurred. Accordingly, where a check is mailed prior to the due date but does not arrive until more than 20 days after this due date, no "payment" was made prior to that time, so that the lease automatically terminated by operation of law, and the Department is without authority to consider a petition for reinstatement of the lease.

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental, within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when he submits payment to the BLM office administering his leases, and when BLM has the opportunity either to receive or decline it. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for reinstatement of an oil and gas lease terminated for failure to make timely payment of annual rental.

Mobil Oil Corp., 35 IBLA 265 (June 2, 1978)

A rental check for an oil and gas offer need not be signed necessarily by the offeror.

Lillian Sweet, 37 IBLA 25 (Sept. 14, 1978)

A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law and not by the action of any official if the annual rental is not paid on or before the due date. Submission of a rental check without identifying the lease number precluded the Bureau of Land Management from accepting the check as payment for the lease, and a lease is properly held to terminate in the absence of a timely identified payment of the rental.

S. Delos Chassaign, 37 IBLA 377 (Nov. 6, 1978)

"Payment." A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the due date. A check for rental does not constitute payment until it is received at the proper office.

Gretchen Capital, Ltd., 37 IBLA 392 (Nov. 8, 1978)

"Reasonable diligence." Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the Bureau of Land Management and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. § 188(c) (1976) because there has been reasonable diligence on the part of lessee.

Lillie Belle Higgins, 38 IBLA 254 (Dec. 8, 1978)

PAYMENTS--Continued

GENERALLY--Continued

Where checks submitted in payment of annual rental on oil and gas leases are returned by the drawee bank as uncollectible because they are postdated, and there has been no bank error, no tender or payment of annual rental has been made. In the absence of any other payment prior to the anniversary date, the leases terminate automatically by operation of law.

An oil and gas lessee who submits payment of annual rentals with checks postdated by 15 days is not reasonably diligent in attempting to make payment thereof. So doing with the expectation that negotiation of the checks will not be delayed past the anniversary date unreasonably anticipates either that BLM will withhold processing the checks until they become valid or that the drawee bank will honor them despite the postdating.

Benjamin T. Franklin, 38 IBLA 291 (Dec. 14, 1978)

Where an offer is drawn No. 1 for a tract consisting of 39.97 acres, BLM requests payment specifically of $40 advance rental, and the offeror remits $39.97 within the 15-day period spelled out in 43 CFR 3112.4-1, the submittal of $39.97 does not constitute satisfactory payment within the ambit of that regulation.

Milton Knoll, 38 IBLA 319 (Dec. 19, 1978)

BLM does not waive its right to declare a lease expired by cashing an advance annual rental check and placing funds in an unearned account.

Richard P. Smoot, 39 IBLA 1 (Jan. 8, 1979)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is $1,955, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for $1,954 within the time required, but fails to submit the $1 deficiency within the allowed time.

C. Panos, 42 IBLA 326 (Aug. 30, 1979)

Timely tender of a check which, when presented, is dishonored properly by the bank on which it is drawn does not constitute timely payment.

Caroline L. Hunt, 43 IBLA 314 (Oct. 22, 1979)

A check is a valid form of remittance for payment of an oil and gas lease filing fee and advance rental. However, it is subject to collection and final payment without cost to the Government. Where a check is returned from a bank as uncollectible, generally, the check cannot be considered as a proper tender of payment.

A check returned from a bank may be considered a tender of payment where the return of the check is shown to have resulted from a confirmed bank error, and the subsequent collection and payment of the check relates back to the time it was originally tendered to BLM. If an oil and gas lease has been canceled and applications rejected because checks have been returned from a bank and the appellant shows bank error, the case is remanded for further consideration.

Jose V. Lim, 44 IBLA 96 (Nov. 20, 1979)

PAYMENTS--Continued

REFUNDS

Where an oil and gas lease is canceled in part because it was erroneously issued as to that part, there is no authority for the Department to pay to the lessee unrealized anticipated profits or to refund the rental for the portion of the lands retained in the lease. By signing the simultaneous oil and gas drawing card, the offeror agreed to accept a lease for those portions of the tract found by BLM to be available for leasing.

Paul W. Temple, 33 IBLA 98 (Dec. 16, 1977)

PHOSPHATE LEASES AND PERMITS

GENERALLY

It is proper to include environmental protection stipulations in a phosphate lease even though the stipulations apply to privately owned surface lands overlying the federally reserved mineral estate under lease or to privately owned lands used in conjunction with the lease.

Cominco American, Inc., 26 IBLA 329 (Sept. 1, 1976)

LEASES

In determining whether a permittee is entitled to a preference right lease the Secretary must consider all legal and economic conditions affecting the proposed operation of the lease as of the time of the determination, including the applicable statutory minimum production royalty rate. A preference right lease must provide for a production royalty rate in conformity with the statutory minimum rate applicable at the time of issuance.

Reduction of Production Royalties Below Statutory Minimum Rates, M-36920 (Dec. 11, 1979) 87 I.D. 69 (1980)

PERMITS

An application for a phosphate prospecting permit is properly rejected upon a determination that lands applied for are withdrawn as oil shale lands by Executive Order No. 5327.

Thomas E. Gaynor, 21 IBLA 178 (July 29, 1975)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

Applications for phosphate prospecting permits are properly rejected by the Bureau of Land Management upon the basis of a determination by the Geological Survey that the lands applied for contain workable deposits of phosphate thus making the lands subject to the leasing provisions rather than the prospecting provisions of the Mineral Leasing Act. A review of the technical data relied upon by the Geological Survey in making its determination is not required where no evidence is submitted on appeal demonstrating error in that determination.

William E. Martin, 24 IBLA 271 (Mar. 30, 1976)

PHOSPHATE LEASES AND PERMITS--Continued

PERMITS--Continued

An application for a phosphate prospecting permit is properly rejected when the lands applied for have been classified as containing deposits of oil shale. The lands are thereby subjected to the withdrawal from leasing and other disposal imposed by Executive Order No. 5327. Rejection of the application is required even though the application was filed prior to the oil shale classification and withdrawal.

Thomas E. Gaynor, 24 IBLA 320 (Apr. 20, 1976)

When deciding whether issuance of a phosphate prospecting permit is appropriate, the Bureau of Land Management is entitled to rely on the reasoned opinion of Geological Survey as its technical expert. A mineral determination made by Geological Survey will not be disturbed in the absence of a clear and definite showing of error. However, when Survey later changes its own determination, the case will be remanded for further consideration.

Philip Shaiman, 25 IBLA 177 (June 14, 1976)

A prospecting permit for phosphate cannot be issued for land subject to a claim. If a prospecting permit for phosphate purports to cover land subject to a mining claim, it is invalid as to that land. Consequently, in demonstrating a discovery of a valuable deposit of phosphate in land subject to a prospecting permit, the permittee must exclude any phosphate in land covered by a mining claim.

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits for Coal and Phosphate, M-36893 (Aug. 2, 1977) 84 I.D. 442

A prospecting permit which embraces land which is not "unclaimed" and "undeveloped" is a nullity and void as a conveyance of any interest in that land. Land in a mining claim remains "unclaimed" land for the purposes of M-36893 so long as the claim is not validated by discovery of a valuable locatable mineral deposit at the date of permit issuance. Surface disturbing mineral activities, associated with delineation of a mineral ore body which could reasonably be expected to disclose knowledge of an area's coal potential constitute development. The bona fide purchaser provisions of sec. 27(h)(2) of the Mineral Leasing Act do not apply to permits which embrace land that is claimed or developed.

The BLM should presume the validity of mining claims or the development of mineral leases disclosed by abstracts submitted by the preference right lease applicant, and allow the applicant to pursue the remedy of private contests or, failing that, issue a notice of intent to reject the lease application where claims or development are shown, and allow the preference right lease applicant the opportunity to show, on the record, the invalidity of the claims, or lack of development, or both.

Effect and Implementation of Solicitor's Opinion M-36893 on "Unclaimed, Undeveloped," M-36893 (Supp.) (Nov. 19, 1979) 86 I.D. 627

RENTALS

The Bureau of Land Management is authorized by regulation 43 CFR 3524.1-4(a)(2)(i) to impose a reasonable bonus per acre as a condition to modifying a phosphate lease by adding land to it noncompetitively.

Cominco American, Inc., 26 IBLA 329 (Sept. 1, 1976)

PHOSPHATE LEASES AND PERMITS--Continued

ROYALTIES

In determining whether a permittee is entitled to a preference right lease the Secretary must consider all legal and economic conditions affecting the proposed operation of the lease as of the time of the determination, including the applicable statutory minimum production royalty rate. A preference right lease must provide for a production royalty rate in conformity with the statutory minimum rate applicable at the time of issuance.

Reduction of Production Royalties Below Statutory Minimum Rates, M-36920 (Dec. 11, 1979) 87 I.D. 69 (1980)

POTASSIUM LEASES AND PERMITS

GENERALLY

"Other related products." "Other associated deposits." When sodium or potassium brines are covered by leases conveying the exclusive right to mine and dispose of sodium compounds and other related products or potassium compounds and other associated deposits, the leases convey the exclusive rights to all minerals dissolved in the brine, including lithium.

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

LEASES

In determining whether a permittee is entitled to a preference right lease the Secretary must consider all legal and economic conditions affecting the proposed operation of the lease as of the time of the determination, including the applicable statutory minimum production royalty rate. A preference right lease must provide for a production royalty rate in conformity with the statutory minimum rate applicable at the time of issuance.

Reduction of Production Royalties Below Statutory Minimum Rates, M-36920 (Dec. 11, 1979) 87 I.D. 69 (1980)

ROYALTIES

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed of under sodium and potassium leases must be imposed on the "gross value of the sodium (or potassium) compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market, and in general, no deductions may be allowed for costs incurred in developing a product to a marketable condition except for the price of reagents which are chemically combined with the product sold from the lease.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

POTASSIUM LEASES AND PERMITS--Continued

ROYALTIES--Continued

In determining whether a permittee is entitled to a preference right lease the Secretary must consider all legal and economic conditions affecting the proposed operation of the lease as of the time of the determination, including the applicable statutory minimum production royalty rate. A preference right lease must provide for a production royalty rate in conformity with the statutory minimum rate applicable at the time of issuance.

Reduction of Production Royalties Below Statutory Minimum Rates, M-36920 (Dec. 11, 1979) 87 I.D. 69 (1980)

POWER

FEDERAL POWER COMMISSION

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

State of Alaska, 20 IBLA 341 (June 11, 1975)

POWERSITE LANDS

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act of June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

United States v. Elbert Gassaway, 43 IBLA 382 (Oct. 31, 1979)

PRACTICE BEFORE THE DEPARTMENT

(*See also* Rules of Practice--if included in this Index.)

GENERALLY

An appellant may adopt arguments prepared by another person and submit them as his or her own statement of reasons so long as appellant acts in good faith and the statement is relevant to the issues on appeal.

Alice M. Hardy, 44 IBLA 5 (Nov. 6, 1979)

PRACTICE BEFORE THE DEPARTMENT--Continued

PERSONS QUALIFIED TO PRACTICE

An appeal filed for an appellant by an attorney-in-fact who is not himself qualified to practice before the Department under 43 CFR 1.3 is subject to summary dismissal.

Haruyuki Yamane et al., 19 IBLA 320 (Apr. 7, 1975)

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to to dismissal.

Pierce and Schlinger, 22 IBLA 396 (Nov. 24, 1975)

An individual not otherwise entitled to practice before the Department who is a full-time employee of two affiliated corporations may represent the corporations before the Department on the basis of the regulation (predicated upon statutory authority), which provides that an officer or a full-time employee of a corporation is qualified to practice before the Department on behalf of the corporation with respect to a particular matter.

Final Decision of the Solicitor in the Matter of the Eligibility of Mr. James R. Kyper to Represent Eastern Associated Coal Corporation and Affinity Mining Company Before the Department of the Interior, M-36883 (Feb. 9, 1976) 83 I.D. 131

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by a person who does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

W. Duane Kennedy, 24 IBLA 152 (Mar. 10, 1976)

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit his to continue to conduct the case in a representative capacity.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

Where contestees in a mining claim contest file a timely answer to the contest complaint, this answer is efficacious as to any other contestees who are members of his family if it appears on the face of the answer that they wish to retain their interests, if any, in the claims, as the contestees who answered may be regarded as having done so on their family members' behalf. In these circumstances, these other contestees are properly regarded as having answered the complaint, absent any manifestation of a contrary intent.

United States v. Jerry Brock et al., 39 IBLA 146 (Jan. 29, 1979)

PRACTICE BEFORE THE DEPARTMENT--Continued

PERSONS QUALIFIED TO PRACTICE--Continued

The Department has determined that an official of the Bureau of Indian Affairs is not entitled to represent a Native allotment applicant in an appeal to the Board of Land Appeals. However, where the case involves the propriety of proofs submitted by the Bureau of Indian Affairs in behalf of a deceased Native allotment applicant, that issue may be resolved.

Ernest L. Olson, Jr. (Deceased), 41 IBLA 179 (June 22, 1979)

The Department has determined that an official of the Bureau of Indian Affairs is not entitled to represent a Native allotment applicant in an appeal to the Board of Land Appeals. However, where the partial rejection of an Alaska Native allotment application turns on the resolution of a factual issue, the case will be remanded to BLM so that heirs or claimants to the estate of the deceased applicant may be afforded notice and opportunity for hearing.

Unknown Heirs of Nigley Kelly, 41 IBLA 387 (July 24, 1979)

PRESIDENT OF THE UNITED STATES

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, as amended, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

PRIVACY ACT

Where it does not appear that the notice required by sec. 7(b) of the Privacy Act of 1974 regarding the disclosure of a social security number was given, an oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure should not be considered defective solely because the applicant omitted designating the social security number on the card as provided thereon.

Harry Reich, 26 IBLA 123 (Sept. 30, 1976)
83 I.D. 507

Richard Lovatt, 28 IBLA 244 (Dec. 10, 1976)

PRIVATE EXCHANGES

GENERALLY

Prior to issuance of a patent an exchange application is nothing more than a proposal under which no contract right arises and no equitable title vests. The Bureau of Land Management has discretion to reject an exchange application where it is determined that the public interest would not be served by the proposed exchange.

Siesta Investments, Inc., 28 IBLA 118 (Nov. 15, 1976)

The appraised values of offered and selected lands in a land exchange application made pursuant to the Federal Land Policy and Management Act of 1976 are properly determined where such values are set in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions.

Prior to issuance of a patent, an exchange application is nothing more than a proposal under which no contract right arises and no equitable title vests.

Paul Kellerblock, 38 IBLA 160 (Dec. 5, 1978)

The Act of Mar. 20, 1922, authorized exchanges for the purpose of consolidating national forest lands, if two criteria were satisfied: (1) the public interest would be benefited thereby; and (2) the proffered lands were chiefly valuable for national forest purposes.

Petro Leasco, Inc., 42 IBLA 345 (Aug. 31, 1979)

PUBLIC INTEREST

The Act of Mar. 20, 1922, authorized exchanges for the purpose of consolidating national forest lands, if two criteria were satisfied: (1) the public interest would be benefited thereby; and (2) the proffered lands were chiefly valuable for national forest purposes.

Petro Leasco, Inc., 42 IBLA 345 (Aug. 31, 1979)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716(a) (1976), the Bureau of Land Management may reject an application to exchange public lands for private lands as not in the public interest in order to protect a significant waterfowl habitat.

Staley Anderson, 44 IBLA 58 (Nov. 20, 1979)

PUBLIC LANDS
(See also Accretion, Avulsion, Boundaries, Reliction, Surveys of Public Lands--if included in this Index.)

GENERALLY

A survey of a previously unsurveyed portion of an island, proved to have been in existence in 1876 when an original survey was conducted in the area, is proper and shall be officially filed where the record shows that the plat of survey reflects the true location of the island on the surface of the earth and was conducted in accordance with both the Manual of Survey Instructions and the special instructions for this conditional survey.

Chester H. Ferguson et al., 20 IBLA 224 (May 13, 1975)

PUBLIC LANDS--Continued

GENERALLY--Continued

The survey of an offshore island without the use of
18.6-year mean high tide data, which governs boundary
disputes between private upland and tideland owners,
is proper; the 18.6-year lunar cycle tide data does
not govern meander lines established in public land
surveys.

Meander of an offshore island is ordinarily based on a
mean high tide determined by the vegetative line upon
the soil in accordance with the Bureau of Land Manage-
ment's Manual of Surveying Instructions.

The meandering of the public land of an offshore island
is properly based on a mean high tide line established
at the vegetative line upon the soil, in accordance
with the provisions of the Bureau of Land Management's
Manual of Surveying Instructions, and a protest against
the filing of a plat of survey based on such a mean
high tide line is properly rejected.

The United States is not estopped to assert title to,
survey, or deny the swamp and overflowed character of
public lands constituting offshore islands in Florida
either by Departmental inaction on the State's swamp-
land application, or by inclusion of the islands in a
swampland selection list, or by the survey protestants'
adverse chain of title and claims of occupancy and use.

The Secretary of the Interior is authorized and under
a duty to determine what lands are public lands and to
survey such lands. Neither the Acts admitting Florida
into the Union, nor the Reconstruction Act of Mar. 2,
1867, divested the Secretary of the Interior of that
authority regarding islands in the State of Florida,
nor divested the United States of title to any public
lands in the State.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

Where land had been conveyed to the United States pur-
suant to the Act of June 4, 1897, ch. 2, 30 Stat. 11,
36, as a base for forest lieu selection rights, and a
purported color of title claim was initiated at a time
when the land had not been opened to the operation of
the public land laws, the color of title claim is not
cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

Title to an island omitted from the original survey but
existing at that time in a nonnavigable river remains
in the United States and is subject to survey despite
the disappearance of the channel separating the island
from the lots which were formerly riparian.

R. A. Mikelson, 26 IBLA 1 (July 6, 1976)

Lands which have been designated by the Act of Aug. 13,
1949, as public domain are not leasable under the Min-
eral Leasing Act for Acquired Lands or Reorganization
Plan No. 3 of 1946, even though they may have been ac-
quired lands prior to the Act of Aug. 13, 1949. A
prospecting permit for uranium on such lands will be
denied.

John R. Meadows, 30 IBLA 14 (Apr. 4, 1977)

The Secretary of the Interior may cause to be made such
resurveys or retracements of the rectangular system of
surveys of public lands as he may deem essential to
mark the boundaries of the remaining public lands.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

PUBLIC LANDS--Continued

GENERALLY--Continued

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2,
Federal laws, including Federal grazing regulations,
override conflicting State laws with respect to public
lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174
84 I.D. 475
(Sept. 15, 1977)

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

A geothermal lease application is properly rejected to
the extent that it includes land which has been recon-
veyed to the United States but which has only been
opened to applications under the nonmineral public
land laws.

Chevron Oil Co., 32 IBLA 275 (Sept. 27, 1977)

Where the Secretary has declined to exercise his juris-
diction, a decision rendered by this Board is final for
the Department. Hence, statements by BLM and arguments
of the Solicitor, while valuable to the Board, are not
binding upon the Board.

H. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 7, 1979)

Federal title to land may be lost by erosion, and land
which has become submerged under water is no longer
subject to disposition under the Alaska Native Allot-
ment Act. The fact that an Alaska Native may have
used, occupied, and filed an application for such land
when it was dry does not prevent the loss of Federal
title to that land by erosion. Neither the Alaska
Statehood Act nor the Submerged Lands Act prevents the
passage of title to such land to the State.

Frank Hulland, 41 IBLA 207 (June 27, 1979) 86 I.D. 342

ADMINISTRATION

The Bureau of Land Management, in the exercise of its
discretionary power to issue special land use permits,
may establish special fee assessments for off-road ve-
hicle (ORV) events.

Walt's Racing Ass'n, 38 IBLA 359 (Jan. 30, 1979)

The administrative treatment of land as reservation
land under the jurisdiction of the Bureau of Indian
Affairs for many purposes is not dispositive of the
status of the land in the face of clear legislation
demonstrating that it was absolutely ceded, even with-
out conflicting administrative treatment of the lands
as public domain or under the jurisdiction of the
Reclamation Service. The Department has the authority
to resolve disputes and correct errors in the status of
lands within its jurisdiction.

Title to Certain Land Within the Boundaries of the Fort
Yuma Indian Reservation as Established by the Executive
Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C.
§ 299 (1970), contemplates the Department of the
Interior retaining continuing jurisdiction and admin-
istration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines
a trespass, the term "public lands" includes mineral

PUBLIC LANDS--Continued

ADMINISTRATION--Continued

deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

APPRAISALS

Where a decision fixes a small tract rental derived from an appraisal report which does not comport with Departmental standards, the decision will be set aside and the case remanded for a new appraisal to establish the fair rental value.

Junction Oil Co., Inc., 21 IBLA 78 (June 25, 1975)

Department of the Interior policy requires that, in most circumstances, full value be received by the Government in any sale of public land.

A notification to a small tract lessee, which was authorized by a memorandum of the Director, Bureau of Land Management, dated Oct. 19, 1955, and approved by the Secretary of the Interior on Nov. 9, 1955, that the lessee could purchase the tract under lease without constructing the improvements required in the option to purchase clause of the lease, if he paid the appraised price shown on the lease within a set time, was an offer to sell the tract by the United States, and exercise of the option by the lessee created a binding contract. Where issuance of the patent was delayed for years because of the contest of a conflicting mining claim, reappraisal to determine changed value since that time is not permissible because there was a binding contract under special authority.

Abraham Epstein, 24 IBLA 195 (Mar. 19, 1976)

CLASSIFICATION

It is proper to reject applications for desert land entries filed for lands which have been classified by the Secretary, pursuant to the petition classification procedure set forth in 43 CFR subpart 2450, as unsuitable for desert land entry and, therefore, are not open for disposition under the desert land laws. The decision of the Secretary is the final Departmental action and the applicants cannot have a review on the merits of an appeal from the subsequent decision rejecting their applications.

Guy A. Martin, Ada E. Martin, 26 IBLA 254 (Aug. 18, 1976)

The statement by the BLM State Office that appellant's petition-application is regular on its face is merely a preliminary determination the application will be considered and the process will be set in motion to classify the land. The decision to classify land for a certain purpose is discretionary with the Secretary of the Interior.

Arthur R. Wallace, 30 IBLA 239 (May 31, 1977)

A petition-application for a homestead entry outside of Alaska requires classification of the land, confers no rights upon an applicant and must be rejected because the Federal Land Policy and Management Act repealed the homestead laws effective on the date of the Act as to lands outside Alaska.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

PUBLIC LANDS--Continued

CLASSIFICATION--Continued

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Bulce Van Tassel, 33 IBLA 221 (Dec. 22, 1977)

Where the Secretary by appropriate notice in the *Federal Register* has classified certain lands for multiple use management and such lands are segregated from desert land entry, and the classification has not been terminated by either a reclassification or publication in *Federal Register* of termination of classification, BLM properly denied petition-application for desert land entry.

Paul R. Jenkins, 39 IBLA 141 (Jan. 29, 1979)

Melvin V. Frandsen, Mary C. Frandsen, 43 IBLA 130 (Sept. 26, 1979)

Lands segregated on the public records by a proposed withdrawal posted Apr. 6, 1973, or a Recreational and Public Purposes Classification filed Nov. 13, 1956, were not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Neither a Recreation and Public Purposes Act classification nor a withdrawal is a rule or regulation within the ambit of the Secretarial policy of Apr. 27, 1971, which provides for utilization of the public participation procedures of 5 U.S.C. § 553 (1976).

Mining claims purportedly located on land not available for such location confer no property right upon the locator, and may be declared null and void ab initio without a hearing under 5 U.S.C. § 554 *et seq.* (1976).

Delmer McLean et al., 40 IBLA 38 (Mar. 15, 1979)

DISPOSALS OF

Generally

The Recreation and Public Purposes Act, and the pertinent regulations thereunder, require that a grantee of land under the Act must develop the land in accordance with the specified uses proposed in the patent application within a reasonable time following the date of issuance of patent.

Failure over a 17- or 18-year period to develop land patented under the Recreation and Public Purposes Act in accordance with the specified uses proposed in the patent application and set out in the patent is a violation of the condition in the patent which provides that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

Clark County School District, 18 IBLA 289 (Jan. 6, 1975)
82 I.D. 1

City of Monte Vista, Colorado, 22 IBLA 107 (Sept. 22, 1975)

A patent of land from the United States conveys only land which is surveyed, and when the surveyors have carried a survey only to a certain line, a grantee may not successfully challenge the correctness of their

PUBLIC LANDS--Continued

DISPOSALS OF--Continued

Generally--Continued

action or claim land beyond that line under a patent issued in accordance with that survey.

Chester H. Ferguson et al., 20 IBLA 224 (May 13, 1975)

The Recreation and Public Purposes Act, and the regulations thereunder, do not authorize additional payment for the issuance of a supplemental patent (which voids an earlier patent's reversionary provision) as an alternative to forfeiture for noncompliance with the Act's provision that land patented under the Act only be used for an established or definitely proposed pub- lic project within a reasonable time following issuance of patent. The Department can alienate interests in public lands only within the limits authorized by law; therefore, issuance of a supplemental patent which eliminates the Act's mandatory reversionary provision is impermissible.

The Department of the Interior is not estopped from denying the legality of a payment in lieu of forfeiture provision inserted in a Recreation and Public Purposes Act patent when such denial works no serious injustice against the patentee and implementation of the provision would harm the public interest by divesting the Government of all jurisdiction over the patented land, thus, precluding enforcement of the Recreation and Pub- lic Purposes Act requirement that lands patented under the Act be devoted to a definitely proposed project for the benefit of the public.

Okanogan County Public Utility, District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

"An Act granting public lands to the town of Silverton, Colorado, for public park purposes" (43 Stat. 980, Feb. 25, 1925).

The above Act and the patent issued in accordance therewith require that the lands granted be used for public park purposes only, and the town's attempt to lease a portion of the lands for the construction of camper sites does not violate the Act and patent since the use of a limited part of the patented land for camper sites is consistent with recreational and public park purposes.

Town of Silverton, 35 IBLA 183 (May 23, 1978)
85 I.D. 140

An error in omitting to survey an island in a navigable stream does not divest the United States of title or interpose any obstacle to surveying it at a later time. An island within the public domain in a navigable stream and actually in existence both at the time of the survey of the banks of the stream and also upon the admission to the Union of the State within which it is situated remains the property of the United States. Even though omitted from survey, such land does not become part of the fractional subdivisions on the opposite banks of the stream.

Public lands owned by the United States cannot be subjected to taxation by the State in which they are located. When Congress has prescribed the conditions upon which portions of the public domain may be alienated and has provided that upon fulfillment of certain conditions the United States shall issue patent, the land becomes taxable only after the applicant has fulfilled all conditions precedent to such conveyance. Payment of taxes to a State for Federal land does not afford the taxpayer any rights against the United States, unless specifically provided by a Federal statute.

Joseph Tomalino, August Sobotka, 42 IBLA 117 (Aug. 16, 1979)

JURISDICTION OVER

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these rights be given to the State by deleting the reservation thereof in the clear list.

State of California, 33 IBLA 160 (Dec. 20, 1977)

Federal law determines the legal characterization of accretions, avulsions, and relictions to land riparian to navigable bodies of water, where title to the land or reserved interests in the land remains in the United States.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

LEASES AND PERMITS

The issuance of a public airport lease on national resource lands lies within the discretion of the Secretary of the Interior. The Department may require an applicant for a public airport lease to accept special stipulations in order to protect the environmental quality of the land, so long as the stipulations are not inconsistent with other reasonable requirements of the Bureau of Land Management or Federal Aviation Administration.

A. H. Brothers, 19 IBLA 104 (Mar. 7, 1975)

The issuance of a public airport lease on the public domain lies within the discretion of the Secretary of the Interior. A decision rejecting an airport lease application in the exercise of that discretion will be affirmed when, even though the Board differs in its opinion of the importance of some of the factors recited as grounds for the rejection, the record shows the decision to be a reasoned analysis of the factors involved, and no sufficient basis to disturb the decision is shown.

Boulder City Aero Club, Inc., 21 IBLA 343 (Aug. 18, 1975)

Where the holder of mineral leases in the Lake Mead National Recreation Area fails to mine and produce minerals within the time prescribed by the lease for reasons not beyond the control of the lessee, the leases are not in good standing and therefore are not subject to renewal.

It is a proper exercise of discretion to refuse to renew mineral leases in the Lake Mead National Recreation Area where the lessee failed to commence mining and produce minerals as required by regulation and by the terms of the lease for reasons which were attributable to the lessee.

Apache Oro Co., 22 IBLA 331 (Nov. 11, 1975)

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

Good Roads District No. 1, 25 IBLA 123 (June 7, 1976)

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Rilite Aggregate Co., 26 IBLA 197 (Aug. 11, 1976)

Where the State Office, following a recommendation of the National Park Service rejects an application for an oil and gas lease in the Lake Mead National Recreation Area on the basis of a general environmental review of the consequences of oil and gas leasing in the Recreation Area, but which does not specifically show that the lands involved are of a particular value in the Recreation Area as a whole and that leasing subject to stipulations will not suffice to protect the recreation and other values of the land, the case will be remanded for a particular application of the environmental review to that land.

Robert P. Wahl, Howard Yee, 28 IBLA 305 (Jan. 13, 1977)

Lands which have been designated by the Act of Aug. 13, 1949, as public domain are not leasable under the Mineral Leasing Act for Acquired Lands or Reorganization Plan No. 3 of 1946, even though they may have been acquired lands prior to the Act of Aug. 13, 1949. A prospecting permit for uranium on such lands will be denied.

John R. Meadows, 30 IBLA 14 (Apr. 4, 1977)

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Irene L. Berger, 31 IBLA 389 (Aug. 19, 1977)

Unsurveyed fast lands, formed by accretion to public land or to lands patented with an oil and gas reservation, riparian to a navigable river and lying within the meander lines of that navigable river, as recorded on the official plat, may be leased provided that a proper offer is received and the other relevant conditions precedent to leasing are met.

The boundary of an oil and gas lease covering lands riparian to a navigable river is the meander line indicated on the official plat of survey and not the waterline. Thus, lands accreted to the leased lands may be separately leased.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

Where, at the end of its term, a mineral lease affecting lands within the Lake Mead Recreation Area is not in good standing, an application for renewal thereof for an additional 5 years is properly denied. Where the lessee fails to develop the lease property diligently during the term of the lease and does not fall within an exception to this requirement, the lease is not in good standing and may not be extended.

Audrine G. Knight, 36 IBLA 53 (June 30, 1978)

Where the State Office, following recommendations of the National Park Service, rejects applications for oil and gas leases under the "excepted areas" provisions of 43 CFR 3111.1-3(e)(4), and where it appears that large portions of the applied-for lands do not fall within such areas, the case will be remanded with instructions to reconsider whether the leasing of lands not in excepted areas would be appropriate.

E. L. Percell, 37 IBLA 272 (Oct. 20, 1978)

E. L. Percell, 40 IBLA 126 (Mar. 26, 1979)

That part of a decision rejecting a headquarters site purchase application which requires the applicant to remove his improvements from the site within 90 days may be set aside and the case remanded to the Alaska State Office to determine whether a temporary use permit can be granted authorizing continued use of the improvements.

Rene F. Lamoureux d/b/a Frenchy Lamoureux, 39 IBLA 36 (Jan. 15, 1979)

RIPARIAN RIGHTS

An oil and gas lease offer for less than 640 acres of land is properly rejected when the application fails to include adjoining, unsurveyed, nonnavigable riverbed lands which were available for leasing at the time the offer was filed.

John E. Williams, 18 IBLA 354 (Jan. 16, 1975)

PUBLIC LANDS--Continued

RIPARIAN RIGHTS--Continued

Generally, the meander line is not to be treated as a
boundary and when the United States conveys a tract
of land by patent referring to an official plat which
shows the tract to be bordering on a navigable body of
water, the patent conveys all the land to the water
line. However, there are three situations in which
meander lines will serve as the boundary of a convey-
ance or grant, rather than a water body: namely, where
there is (1) fraud or (2) gross error shown in the sur-
vey, or (3) where the facts and circumstances disclose
an intention to limit a grant or conveyance to the ac-
tual traverse lines.

Chester W. Ferguson et al., 20 IBLA 224 (May 13, 1975)

Title to an island omitted from the original survey but
existing at that time in a nonnavigable river remains
in the United States and is subject to survey despite
the disappearance of the channel separating the island
from the lots which were formerly riparian.

D. A. Mikelson, 26 IBLA 1 (July 6, 1976)

The acceptance by a State of other lands as indemnity
for lands lying within the meander line of a nonnaviga-
ble lake adjacent to the granted upland school section,
was a relinquishment of any interest in the adjacent
land underlying the lake as an incident to the grant of
the school section to the extent such land lies within
the linear boundaries of the school section, and pre-
cludes the assertion of a State claim to such lands.

State of Montana, 28 IBLA 124 (Nov. 16, 1976)

In determining what land is conveyed under patents or
grants of public land bordering a meandered watercourse,
the general rule is that the waterline itself, not the
meander line, constitutes the boundary. There is an
exception where the meander line may constitute the
boundary between lands omitted from the survey and the
watercourse if fraud or gross error is shown in the
survey. This exception is only applicable to limit the
boundary of the surveyed lots on the side of the water-
course where the omitted land is shown. It does not
apply to a lot on the opposite side of the watercourse
from the omitted land so as to pass title to the omit-
ted land with title to the lot on the opposite side.
The waterline would remain the actual boundary of that
lot.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

Unsurveyed fast lands, formed by accretion to public
land or to lands patented with an oil and gas reserva-
tion, riparian to a navigable river and lying within
the meander lines of that navigable river, as recorded
on the official plat, may be leased provided that a
proper offer is received and the other relevant condi-
tions precedent to leasing are met.

Federal law determines the legal characterization of
accretions, avulsions, and relictions to land riparian
to navigable bodies of water, where title to the land
or reserved interests in the land remains in the United
States.

Federal law follows the common law in distinguishing
between accretion and avulsion. Accretion is the
gradual and imperceptible addition of land to adjacent
riparian land. Title to accreted lands inures to the
uplands owner. Avulsion is the sudden perceptible
shifting of the course of a river or stream. In the
case of avulsion, title to the avulsed land is not lost

PUBLIC LANDS--Continued

RIPARIAN RIGHTS--Continued

by its former owner nor does it accrue to the owner of
what was formerly the opposite bank.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

SPECIAL USE PERMITS

Issuance of a special use permit is clearly discretion-
ary, and the Bureau of Land Management may reject an
application in part for a permit for commercial river
running where an evaluation of the Bureau's river man-
agement program for the Green River shows that the
total passenger days applied for will exceed the river
carrying capacity and would be inconsistent with the
Bureau's objectives and program for environmental pro-
tection of the river area.

Canco Tours, Inc., 20 IBLA 216 (May 8, 1975)

The issuance of a special land-use permit is discre-
tionary, and the Bureau of Land Management may reject
a special land-use permit application when the proposed
use would adversely affect the public interest, and may
offer, in the alternative, a permit providing for use
consonant with proper management of national resource
lands.

Jerry Tecklin, Leonard Brackett, 20 IBLA 306 (May 30,
1975)

The issuance of a special land use permit by the Bureau
of Land Management is clearly discretionary, but the
Bureau may not issue a permit when the provisions of
existing laws may be invoked to provide for the pro-
posed use. However, if a withdrawal of the lands in
issue precludes the invocation of such provisions, a
permit may be granted if consistent with the public in-
terest. Where the land has been withdrawn by Executive
Order No. 6206 of July 16, 1933, for the protection of
the water supply of the City of Los Angeles, and the
City objects to the issuance of a permit for agricul-
tural purposes, but does not show why it objects, the
case will be remanded to develop the facts and for fur-
ther appropriate consideration.

Edward L. Butterworth, 23 IBLA 136 (Dec. 23, 1975)

Issuance of special land use permits is discretionary,
and it is proper to reject an application for such a
permit if the use for which the application is made is
inconsistent with the objectives of the Bureau of Land
Management and programs for public use of the land.

Ronald J. Laughlin, d/b/a Riverside Resort & Casino,
25 IBLA 41 (May 12, 1976)

A petition for reconsideration of a decision of the
Board of Land Appeals which affirmed the rejection of
a special land use permit application will not result
in the modification of the earlier decision where that
rejection is based upon rational grounds and is consis-
tent with the objectives of the Bureau of Land Manage-
ment and programs for public use of the land.

*Ronald J. Laughlin (d/b/a Riverside Resort & Casino)
(On Reconsideration)*, 26 IBLA 154 (Aug. 2, 1976)

PUBLIC LANDS--Continued

SPECIAL USE PERMITS--Continued

The issuance of a special land use permit by the Bureau of Land Management is discretionary, but the Bureau may not issue a permit when the provisions of existing laws may be invoked by the applicant to provide for the proposed use.

A special land use permit may be issued for land being used in trespass for a limited time during pendency of negotiations seeking to effect a land exchange whereby the land occupied in trespass may be patented.

Alfred Gaiser, 26 IBLA 313 (Aug. 30, 1976)

Where the declared administrative policy is to refuse permission for geophysical exploration on lands controlled by sec. 17(d)(1) of the Alaska Native Claims Settlement Act and the subject lands are under consideration for possible inclusion in the national forest system, a decision refusing such permission will be affirmed.

Shell Oil Co., 28 IBLA 378 (Feb. 4, 1977)

A special use permit for commercial passenger carrying river-trip operations may be denied renewal for non-use or reduced for incomplete use over a 2-year period and only use during the crucial high season may be counted in determining usage if the permit so provides. However, where the program is recent and permittees are not fully familiar with its operations, and all the requirements for maintaining the permit are not immediately apparent, a permittee may be given some leeway before his permit is denied renewal.

Wilderness River Outfitters and Trail Expeditions, Inc., 30 IBLA 148 (May 16, 1977)

A special recreation use permit for commercial boat operations may be denied renewal for nonuse over a 2-year period of any allocated passenger days under a properly noticed "use or lose" policy. However, where the permit program is relatively recent and administrative techniques are not fully reliable, and where the appellant documents on appeal some use of its allocation during the 2-year period, the permit should not be denied renewal under the "use or lose" policy.

Canyoneers, Inc., 30 IBLA 354 (June 9, 1977)

Under the Federal Land Policy and Management Act of 1976 and interim guidelines issued pursuant thereto, special use permit applications for access roads over public land are properly processed as right-of-way applications. 43 U.S.C. § 1761. The Bureau of Land Management correctly denies such an application where it has determined, in conformance with the Act and interim guidelines, that an access road would neither be in the public interest nor facilitate land management policy.

Edwin L. Rumpf, Jr., 31 IBLA 367 (Aug. 1, 1977)

The issuance of a special use permit is discretionary, and the Bureau of Land Management properly exercises that discretion where it denies permits for three of four ORV events on the ground that lack of funds, time, and manpower would impede processing of applications and preclude preparation of the requisite environmental analysis records.

Baja Motor Sports, 32 IBLA 142 (Sept. 12, 1977)

PUBLIC LANDS--Continued

SPECIAL USE PERMITS--Continued

The issuance of a use permit is discretionary, and BLM may reject an application for such a permit where Bureau studies indicate that the uses proposed are inconsistent with the agency's objectives for the lands involved.

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as filed under the Federal Land Policy and Management Act of 1976.

Arnold E. Bedell, 37 IBLA 22 (Sept. 12, 1978)

A special land use permit is revocable in the discretion of the authorized officer at anytime upon notice to the permittee. Such permit is properly canceled when a millsite claimant, having located a claim on the same land included in the permit, requests revocation of the permit in order to facilitate construction on tailings pond expansion necessary to meet Federal and State requirements.

U.S. Energy Corp., 38 IBLA 110 (Nov. 20, 1978)

That part of a decision rejecting a headquarters site purchase application which requires the applicant to remove his improvements from the site within 90 days may be set aside and the case remanded to the Alaska State Office to determine whether a temporary use permit can be granted authorizing continued use of the improvements.

Rene E. Lamoureux d/b/a Frenchy Lamoureux, 39 IBLA 36 (Jan. 15, 1979)

Where an application for a special use permit is not filed until more than 10 months after a deadline for doing so imposed by BLM, it is properly rejected.

Where a permittee is not familiar with an unpublished BLM policy to the effect that the tardy filing of an application for permit renewal in 1978 makes the permittee a "new" applicant in 1979 and, as such, ineligible to receive a permit, BLM's decision enforcing this policy and rejecting the permittee's 1979 application will be reversed.

Outdoor Adventure River Specialists, Inc., 41 IBLA 132 (June 14, 1979)

The issuance of special use permits is discretionary and BLM may properly reject a permit application if the use identified is inconsistent with BLM's objectives, responsibilities and programs for managing the public lands. BLM may propose alternatives or impose restrictions or stipulations in order to issue a permit consistent with its responsibilities.

Southern California Motorcycle Club, Inc., Sierra Club, 42 IBLA 164 (Aug. 17, 1979)

PUBLIC RECORDS
(*See also* Administrative Procedure, Confidential Information--if included in this Index.)

The notation on land office records of a noncompetitive oil and gas lease application does not prevent the State of Alaska from selecting the land pursuant to the Alaska Statehood Act.

Yukon Services, Inc., 22 IBLA 220 (Oct. 15, 1975)

PUBLIC RECORDS--Continued

The notation on public records of the Bureau of Land Management of a request for withdrawal has a segregative effect on land included in a mining location, so that in a contest proceeding, the claimants must show that they had made a discovery of a valuable mineral deposit before the time of posting of the withdrawal application.

United States v. John L. Maley and James P. Pagel, 29 IBLA 201 (Mar. 22, 1977)

Where material involving a prior mineral reservation on acquired lands is first submitted on appeal, and the effect of a State statute and State court decree is in issue, it is appropriate to remand the case to the BLM State Office for further consideration.

A. M. Henderson, 30 IBLA 8 (Apr. 4, 1977)

Where a mining claim is located on lands a. a time when the official records of the Bureau of Land Management showed such lands to be subject to a proposed withdrawal from operation of the mining laws, that mining claim is null and void ab initio.

Jack D. Capon et al., 30 IBLA 112 (May 2, 1977)

Publication in the *Federal Register* of a notice of proposed classification pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

Land is segregated from entry under the mining laws when a proposed withdrawal of the lands from mineral entry is noted on the official records of the Bureau of Land Management and a mining claim located after that time is null and void ab initio.

William J. Smith, Sr., et al., 33 IBLA 47 (Nov. 25, 1977)

Public lands owned by the United States cannot be subjected to taxation by the State in which they are located. When Congress has prescribed the conditions upon which portions of the public domain may be alienated and has provided that upon fulfillment of certain conditions the United States shall issue patent, the land becomes taxable only after the applicant has fulfilled all conditions precedent to such conveyance. Payment of taxes to a State for Federal land does not afford the taxpayer any rights against the United States, unless specifically provided by a Federal statute.

Joseph Tomalino, August Sokotka, 42 IBLA 117 (Aug. 16, 1979)

PUBLIC SALES

GENERALLY

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2785 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and

PUBLIC SALES--Continued

GENERALLY--Continued

withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

Department of the Interior policy requires that, in most circumstances, full value be received by the Government in any sale of public land.

Abraham Epstein, 24 IBLA 195 (Mar. 19, 1976)

The Secretary of the Interior has complete discretion to determine whether the surface of public land reported as valuable for any leasable mineral should be disposed of and a nonmineral application may be allowed only if it is determined by the proper officer with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interefere with current or contemplated operations under the Mineral Leasing Act.

A determination by the United States Geological Survey that certain lands under a public sale application are valuable for various leasable minerals will not be disturbed in the absence of a clear showing by the applicant that such determination was improperly made.

The Peabody Coal Co., 26 IBLA 127 (July 30, 1976)

Where the Bureau of Land Management rejects a public sale application based on a determination by Geological Survey that certain lands encompassed by a public sale application contain workable coal deposits and Geological Survey's conclusion that the exercise of surface rights will unreasonably interfere with operations under the mineral leasing law, the case will be remanded for further consideration when the bare conclusion of the Geological Survey is unsupported by any facts and where there is a lack of evidence in the record to support such conclusion.

Edward E. Swartz, 27 IBLA 308 (Oct. 29, 1976)

Although the Federal Land Policy and Management Act, 43 U.S.C.A. § 1701 *et seq.* (West Supp. 1977), repealed the Isolated Tract Act, 43 U.S.C. § 1171 (1970), where a public sale was held prior to Oct. 21, 1976, with the decision to hold the sale fully supported by land use plans, and there is an explicit finding that disposal criteria of the Federal Land Policy and Management Act have been met, final certificate and patent may be issued to the highest preference right bidder pursuant to 43 CFR 2711.4 *et seq.*

L. A. Gillette, 33 IBLA 182 (Dec. 21, 1977)

It is a proper exercise of discretion under the Federal Land Policy and Management Act of 1976 for the Bureau of Land Management to refuse to process and to reject applications for public sale pending on the date of the Act, even though it will continue to process bids and preference right applications for a sale held prior to the Act.

United Park City Mines Co., 33 IBLA 358 (Jan. 18, 1978)

PUBLIC SALES--Continued

GENERALLY--Continued

A determination by the United States Geological Survey that certain lands in an application for sale under the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), are underlain with coal, and that sale of the surface rights would interfere with the operation of the Mineral Leasing Act of 1920, will not be disturbed in the absence of a clear showing by the applicant that the determination was improperly made.

Mace Cox, 38 IBLA 340 (Dec. 20, 1978)

APPLICATIONS

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2705 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

A determination by the United States Geological Survey that certain lands under a public sale application are valuable for various leasable minerals will not be disturbed in the absence of a clear showing by the applicant that such determination was improperly made.

The Kemmerer Coal Co., 26 IBLA 127 (July 30, 1976)

Where the Bureau of Land Management rejects a public sale application based on a determination by Geological Survey that certain lands encompassed by a public sale application contain workable coal deposits and Geological Survey's conclusion that the exercise of surface rights will unreasonably interfere with operations under the mineral leasing law, the case will be remanded for further consideration when the bare conclusion of the Geological Survey is unsupported by any facts and where there is a lack of evidence in the record to support such conclusion.

Edward H. Swartz, 27 IBLA 308 (Oct. 29, 1976)

An application to purchase public land filed pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), is properly rejected as to two of the three tracts sought when the Geological Survey reports that such lands are underlain with coal; that a coal company holds coal prospecting permits for such lands and intends to mine the coal if leases issue; and that exercise of surface rights would unreasonably interfere with operations under the Mineral Leasing Act of 1920. In addition, the public interest dictates rejection of the application as to such tracts because conveyance of the surface rights could allow the surface owner, pursuant to the Wyoming Environmental Quality Act of 1973, to prevent strip mining of the underlying coal by withholding his consent to mine.

Edward H. Swartz, 31 IBLA 210 (July 6, 1977)

A decision to return an application for a public sale constitutes an action adverse to the applicant by an officer of the Bureau of Land Management and is thus appealable to the Board of Land Appeals under 43 CFR 4.410.

United Park City Mines Co., 33 IBLA 358 (Jan. 10, 1978)

PUBLIC SALES--Continued

APPLICATIONS--Continued

BLM has discretion to reject public sale applications pursuant to R.S. 2455, repealed by the Federal Land Policy and Management Act of 1976, effective Oct. 21, 1976, where the sale has not been held by this date. The filing of a public sale application creates no rights under sec. 701(a) of FLPMA which prevent BLM from exercising its discretion to dismiss the application.

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

An application to purchase public land filed pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), is properly rejected when the Geological Survey reports that such lands are underlain with coal, and that exercise of surface rights would unreasonably interfere with operations under the Mineral Leasing Act of 1920. In addition, the public interest dictates rejection of the application because conveyance of the surface rights could allow the surface owner, pursuant to the Surface Mining Control and Reclamation Act of 1977, to prevent strip mining of the underlying coal by withholding his consent to mine.

A determination by the United States Geological Survey that certain lands in an application for sale under the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), are underlain with coal, and that sale of the surface rights would interfere with the operation of the Mineral Leasing Act of 1920, will not be disturbed in the absence of a clear showing by the applicant that the determination was improperly made.

Mace Cox, 38 IBLA 340 (Dec. 20, 1978)

PREFERENCE RIGHTS

A contiguous landowner loses his preference right to purchase land offered at public sale when he fails to submit his preference right bid within the 30-day period provided by regulation; the Government's failure to return the check which accompanied his unsuccessful bid during this period, and his reliance on assurances it had been returned, do not excuse noncompliance with the preference right regulation, 43 CFR 2711.4(b)(1).

Basil E. Twist, 19 IBLA 75 (Feb. 26, 1975)

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968 (43 U.S.C. §§ 1431-1435 (1970)), is properly rejected when the applicant fails to submit satisfactory evidence of his ownership of contiguous lands within the time specified by the authorized officer as provided by regulation.

Yost Cattle Co., 24 IBLA 347 (Apr. 23, 1976)

As between two preference right applicants for land offered at public sale under the Isolated Tract Act, 43 U.S.C. § 1171 (1970), departmental regulation 43 CFR 2711.4(b)(2) continues in effect pursuant to 43 U.S.C.A. §§ 1713, 1740 (West Supp. 1977) and is strictly construed with regard to the deadline for making the required showing of fee title to contiguous land.

L. A. Gillette, 33 IBLA 182 (Dec. 21, 1977)

PUBLIC SALES--Continued

SALES UNDER SPECIAL STATUTES

A contiguous landowner loses his preference right to purchase land offered at public sale when he fails to submit his preference right bid within the 30-day period provided by regulation; the Government's failure to return the check which accompanied his unsuccessful bid during this period, and his reliance on assurances it had been returned, do not excuse noncompliance with the preference right regulation, 43 CFR 2711.4(b)(1).

Basil B. Twist, 19 IBLA 75 (Feb. 26, 1975)

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2785 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

T. R. Markham, 24 IBLA 5 (Feb. 4, 1976)

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968 (43 U.S.C. §§ 1431-1435 (1970)), is properly rejected when the applicant fails to submit satisfactory evidence of his ownership of contiguous lands within the time specified by the authorized officer as provided by regulation.

Rose Cattle Co., 24 IBLA 367 (Apr. 23, 1976)

An application to purchase public land filed pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), is properly rejected as to two of the three tracts sought when the Geological Survey reports that such lands are underlain with coal; that a coal company holds coal prospecting permits for such lands and intends to mine the coal if leases issue; and that exercise of surface rights would unreasonably interfere with operations under the Mineral Leasing Act of 1920. In addition, the public interest dictates rejection of the application as to such tracts because conveyance of the surface rights could allow the surface owner, pursuant to the Wyoming Environmental Quality Act of 1973, to prevent strip mining of the underlying coal by withholding his consent to mine.

Edward H. Swartz, 31 IBLA 210 (July 6, 1977)

An application to purchase public land filed pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), is properly rejected when the Geological Survey reports that such lands are underlain with coal, and that exercise of surface rights would unreasonably interfere with operations under the Mineral Leasing Act of 1920. In addition, the public interest dictates rejection of the application because conveyance of the surface rights could allow the surface owner, pursuant to the Surface Mining Control and Reclamation Act of 1977, to prevent strip mining of the underlying coal by withholding his consent to mine.

Pace Cox, 38 IBLA 340 (Dec. 20, 1978)

RAILROAD GRANT LANDS

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489, as *amended* by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end.

In a hearing on a patent application filed under the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), the Government has the obligation of making a prima facie case of mineral character between the date the railroad line was definitely located and the date of purchase, whereupon the applicant has the burden of establishing nonmineral character by a preponderance of the evidence.

Land included in an application under sec. 321(b) of the Transportation Act of 1940 is properly determined to be mineral in character between the date the railroad line was definitely located and the date of purchase where the land was covered by mining claims, evidence of extensive and successful mining on adjacent lands was established, and the subject land had similar surface geologic conditions when compared with the surface mineralization on adjacent lands having valuable mineral deposits.

Where land applied for pursuant to sec. 321(b) of the Transportation Act of 1940 was mineral in character between the date the railroad line was definitely located and the date of purchase from the railroad company, and the purchaser was chargeable with actual or constructive notice of that fact, the purchaser was not an innocent purchaser for value.

Southern Pacific Co., Heirs of George H. Bedshire, 20 IBLA 365 (June 12, 1975)

Legal title, although not record title, to granted lands passes to a railroad under a railroad land grant act upon the filing of a map of definite location of the railroad and such title is subject to divestiture by adverse possession under State laws prior to the issuance of patent to the granted lands.

Where land within the primary limits of a railroad land grant is excluded or reserved by the terms of the granting act, the adverse possession of one who asserts only that he has satisfied the statute of limitations of a particular State will not divest the United States of its title or invest the adverse possessor with any interest in the land.

Where land within the primary limits of a railroad land grant is not excluded or reserved by the terms of the granting act, the statute operates to vest title in the railroad at the time the railroad qualifies to receive it. It is a grant *in praesenti*, regardless of whether the United States has issued its patent or certificate.

Lands known to be mineral in character (except for coal or iron) at the time of definite location of a railroad are excluded from the grant of place lands to the railroad even though the lands may later lose their mineral character.

The period for determination by the Department of the Interior whether public land included within the primary limits of a legislative grant-in-aid of the construction of a railroad which excepts mineral land is mineral in character extends to the time of issuance of patent to the railroad company.

Where the purchaser from the railroad of unpatented land believed at the time of his purchase that the land was mineral, and there was physical evidence of its mineral character, or if conditions were such that the purchaser should have known then that the land was excepted from the grant to the railroad, he was not a purchaser in good faith within the "innocent purchaser" proviso of sec. 321(b) of the Transportation Act of 1940.

When the Department of the Interior finds that public land within the place limits of a legislative grant-in-aid of the construction of a railroad was mineral in character and the railroad company challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence.

Southern Pacific Transportation Co., Jay R. Fogal; Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976)
83 I.D. 1

Although the grants of a right-of-way to a railroad under sec. 2 of the Act of July 1, 1862, and of title to odd-numbered sections of land under sec. 3 of that Act were grants *in praesenti* the railroad's interest in the right-of-way land stems solely from sec. 2. There is no difference in its interest in portions of the right-of-way land which cross even-numbered sections of land and in portions which cross odd-numbered sections. Minerals underlying the right-of-way were reserved to the United States in both instances.

Brown W. Cannon, Jr., et al. 24 IBLA 166 (Mar. 16, 1976)
83 I.D. 80

The Secretary of the Interior does not have authority under the Right-of-Way Oil and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 *et seq.* (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the mineral estate was included within the grant to the patentee.

Amerada Hess Corp., 24 IBLA 360 (Apr. 27, 1976)
83 I.D. 194

A railroad right-of-way, granted under the Act of July 1, 1862, 12 Stat. 489, *as amended*, by Act of July 2, 1864, 13 Stat. 356, crossing a school section, does not constitute lands "otherwise disposed of by the United States" within the ambit of the school indemnity statutes. Therefore a rejection of an indemnity selection application, offering such base, is proper.

State of Wyoming, 27 IBLA 137 (Sept. 29, 1976)
83 I.D. 364

Pursuant to sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), patent may be issued for grant lands sold by the railroad if either (1) the land was not mineral in character between the time of the alleged grant to the railroad and the time of the sale or (2) although the land was mineral in character the purchaser was not, at the time of sale, chargeable with actual or constructive notice of that fact.

To establish the mineral character of railroad grant lands under the Act of July 1, 1862 (12 Stat. 489), *as amended*, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--on the critical date are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

When the Department of the Interior finds that public land within the place limits of a grant to a railroad under the Act of July 1, 1862, *as amended*, was mineral in character and the railroad company, filing for patent on behalf of an alleged bona fide purchaser from it, challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence, and the bona fides of the purchaser.

Southern Pacific Transportation Co., 32 IBLA 218 (Sept. 19, 1977)

Sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), authorizes, rather than mandates, the issuance of patents to innocent purchasers for value of lands which did not pass to a railroad under a statutory grant because of their mineral character, the rights of any such innocent purchaser being dependent upon the conditions and limitations of the Act of Mar. 3, 1887, 43 U.S.C. § 898 (1970).

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970) and 43 U.S.C. § 898 (1970), in which case a hearing need not be ordered to determine whether a railroad's purchaser was an innocent purchaser for value.

Southern Pacific Transportation Co., Donald F. Lee, Charles Sillet v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

RECLAMATION HOMESTEADS

GENERALLY

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior establishes the unit of acreage per entry and publicly announces the availability of water for irrigation.

Richard E. Crill et al., 18 IBLA 428 (Feb. 14, 1975)

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Dallas C. Coalson et al., 36 IBLA 119 (July 25, 1978)

RECLAMATION LANDS

GENERALLY

An application to make a homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Richard E. Crill et al., 18 IBLA 428 (Feb. 14, 1975)

RECLAMATION LANDS--Continued

GENERALLY--Continued

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have estab- lished the unit of acreage per entry and publicly an- nounced the availability of water for irrigation.

Lewis M. Eslick, 24 IBLA 237 (Mar. 24, 1976)

Dallas C. Quelsen et al., 36 IBLA 119 (July 25, 1978)

The rejection of an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), to open lands in a reclamation withdrawal to mineral location will be affirmed when the applicant fails to submit facts to show the basis for his knowledge or belief that the lands contain valuable mineral deposits. Merely to state the lands contain such deposits is not sufficient.

Joe Ashburn, 27 IBLA 227 (Oct. 12, 1976)

Sec. 25 of the Act of Apr. 21, 1904, which authorized the application of the Reclamation Act of 1902 to the Yuma Indian Reservation, did not repeal by implication sec. 17 of the Act of Aug. 15, 1894, which provided for the cession, reclamation and allotment of the Reserva- tion, and is in no way inconsistent with the 1894 Act.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977) 84 I.D. 1

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears war- ranted by the appellant's showings and willingness to propose terms and conditions to protect the Govern- ment's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is prem- ised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

Where lands are receiving benefits from both an SRPA loan project and an ordinary reclamation project, gen- eral reclamation law, including residency and acreage limitations, apply to those lands.

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act ---- Projects, M-36904 (July 17, 1978) 85 I.D. 254

RECLAMATION LANDS--Continued

GENERALLY--Continued

Sec. 8 of the 1902 Reclamation Act, 43 U.S.C. § 372 et seq. (1976), prohibits the Bureau of Reclamation from claiming any reserved water rights for any reclamation project unless the terms of any project authorization subsequent to 1902 can fairly be read to provide for a reservation of water.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the ---- Bureau of Land Management, M-36914 (June 25, 1979) 86 I.D. 553

INCLUSION AND EXCLUSION OF WITHIN IRRIGATION DISTRICT

Sec. 9(e) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(e) (1970), does not give the Secretary any independent authority for entering water service contracts for areas except as separately authorized by Congress.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

IRRIGABLE LANDS

Certification that lands are irrigable is a separate and distinct process from authorizing a Bureau of Rec- lamation project and cannot be construed as authoriza- tion to serve lands in excess of those specifically authorized in the project act.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

RECREATION AND PUBLIC PURPOSES ACT

The Recreation and Public Purposes Act, and the perti- nent regulations thereunder, require that a grantee of land under the Act must develop the land in accordance with the specified uses proposed in the patent appli- cation within a reasonable time following the date of issuance of patent.

Failure over a 17- or 18-year period to develop land patented under the Recreation and Public Purposes Act in accordance with the specified uses proposed in the patent application and set out in the patent is a vio- lation of the condition in the patent which provides that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

Clark County School District, 18 IBLA 289 (Jan. 6, 1975) 82 I.D. 1

City of Monte Vista, Colorado, 22 IBLA 107 (Sept. 22, 1975)

The filing of a petition-application under the Recre- ation and Public Purposes Act does not segregate the land applied for or preclude consideration of later filed applications unless and until the land is finally classified for the purpose applied for under the Act.

The denial of a petition for classification and the rejection of an application under the Recreation and Public Purposes Act for a lease of lands which have been withdrawn and which are also subject to a State selection application which, under the terms of the withdrawal order, may be allowed, does not violate the tenets of due process because the disposition of the petition-application is at the discretion of the Secre- tary, and the petitioner-applicant has no vested right protected by constitutional guarantees or by the Administrative Procedure Act.

Mountaineering Club of Alaska, Inc., 19 IBLA 198 (Mar. 19, 1975)

Lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (Supp. III 1973), are withdrawn from all forms of appropriation under the public land laws, including, without limitation, the Recreation and Public Purposes Act, *as amended*, 43 U.S.C. §§ 869 to 869-3 (1970), and an application under the latter Act for such withdrawn lands is properly rejected.

Alaska Department of Fish and Game, 20 IBLA 50 (Apr. 23, 1975)

The rejection of an application for the purchase of land under the Recreation and Public Purposes Act does not violate the tenets of due process since the disposition of the application is at the discretion of the Department, and the applicant has acquired no vested right protected by the United States Constitution.

The Recreation and Public Purposes Act authorizes the Secretary, in his discretion, to sell or lease tracts of national resource lands. The proposed mode for financing the development of land applied for pursuant to the Recreation and Public Purposes Act cannot compel issuance of a patent instead of a lease if issuance of a patent would be contrary to the public interest as determined by the Secretary or his delegate. Thus, in the event the applicant has secured financial resources by promising acquisition of title to the land, the proper action is not for the Bureau of Land Management to change the applicant's tenure status in violation of the public interest, but rather for the applicant to secure alternate financing arrangements.

Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182 (Oct. 7, 1975)

The Recreation and Public Purposes Act, and the regulations thereunder, do not authorize additional payment for the issuance of a supplemental patent (which voids an earlier patent's reversionary provision) as an alternative to forfeiture for noncompliance with the Act's provision that land patented under the Act only be used for an established or definitely proposed public project within a reasonable time following issuance of patent. The Department can alienate interests in public lands only within the limits authorized by law; therefore, issuance of a supplemental patent which eliminates the Act's mandatory reversionary provision is impermissible.

The Department of the Interior is not estopped from denying the legality of a payment in lieu of forfeiture provision inserted in a Recreation and Public Purposes Act patent when such denial works no serious injustice against the patentee and implementation of the provision would harm the public interest by divesting the Government of all jurisdiction over the patented land, thus, precluding enforcement of the Recreation and Public Purposes Act requirement that lands patented under the Act be devoted to a definitely proposed project for the benefit of the public.

Okanogan County Public Utility, District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

A grantee's failure to develop for an unreasonable period of time (over 19 years) lands patented under the Recreation and Public Purposes Act constitutes a violation of the reversionary clause in the patent which states that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

Clark County, Nevada, 28 IBLA 210 (Dec. 8, 1976)

A recreation and public purposes application must be rejected for lands temporarily withdrawn for an irrigation project to benefit Indians. Such a withdrawal is effective until specifically revoked, even though it is made on a temporary basis and has been in effect for more than 50 years.

Elko County Board of County Supervisors, 29 IBLA 220 (Mar. 23, 1977)

A grantee's transfer of the property and its subsequent use for a purpose (big game guiding service) other than the one described in the patent (mission parsonage and chapel) without consent of Department of the Interior triggers reversion of the land to the United States.

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

Lands segregated on the public records by a proposed withdrawal posted Apr. 6, 1973, or a Recreational and Public Purposes Classification filed Nov. 13, 1956, were not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Neither a Recreation and Public Purposes Act classification nor a withdrawal is a rule or regulation within the ambit of the Secretarial policy of Apr. 27, 1971, which provides for utilization of the public participation procedures of 5 U.S.C. § 553 (1976).

Delmer McLean et al., 40 IBLA 34 (Mar. 15, 1979)

Where a lease under the Recreation and Public Purposes Act, *as amended*, 43 U.S.C. § 869 (1976), erroneously states the 1-year rental as being the rental for 5 years, and the lessee knew or had reason to know of the error, the error is a unilateral mistake, and the lease may be properly corrected to show the true rental, or the lease may be rescinded if appellant does not desire to be bound by the reformed agreement.

St. Scholastica Academy, 40 IBLA 175 (Apr. 3, 1979)

Mere nonuse of land patented under the Recreation and Public Purposes Act is not equivalent to a devotion of the land to an unauthorized use and, of itself, will not cause the title to revert to the United States.

Where the grantee of land under the Recreation and Public Purposes Act enters into an executory contract to convey an interest in a portion of the land to another, who then undertakes to perform his obligation to enter the land and improve it without prior Departmental approval, this constitutes an attempt on the part of the patentee to make an unauthorized transfer of title or

RECREATION AND PUBLIC PURPOSES ACT--Continued

control, and title to the entire tract reverts to the United States.

Sky Pilots of Alaska, Inc., 40 IBLA 355 (May 14, 1979)

A recreation and public purposes classification, issued pursuant to the Recreation Act of 1926, *as amended*, 43 U.S.C. § 869 (1976), segregates Alaskan lands from Native allotment applications until such time as the classification is revoked.

Under Secretarial Order No. 3040, it is sufficient if the 5 years' use and occupancy, required under the Native Allotment Act, is completed prior to the granting of the allotment, providing applicant either filed for his allotment or commenced use and occupancy prior to the withdrawal.

Betty J. Thompson, 43 IBLA 174 (Sept. 28, 1979)

REGULATIONS
(*See also* Administrative Procedure--if included in this Index.)

GENERALLY

The regulations pertaining to sec. 15 grazing leases provide that a corporation is a qualified applicant for a lease if it is a corporation whose controlling interest is vested in persons who are engaged in the livestock business. 43 CFR 4121.1-1(b). Where the corporate applicant itself is engaged in a livestock business such a showing is sufficient for the corporation to meet this requirement without the need for those holding a controlling interest in the corporation to make an additional showing that they are engaged in a livestock operation in their individual capacities.

Defenders of Wildlife, 19 IBLA 219 (Mar. 25, 1975)

A regulatory change in the definition of the phrase "primary term" of an oil and gas lease is not an order or consent of the Secretary of the Interior to suspend operations under an oil and gas lease.

A lessee's request that its oil and gas lease be reinstated because it relied on a regulation which has been changed is properly rejected where the lease expired by operation of law at the end of its extended term and there is no statutory authority whereby it can be reinstated.

Inexco Oil Co., 20 IBLA 134 (May 5, 1975)

A grazing lease issued in 1933 for reindeer under the Act of Mar. 4, 1927, became subject to the Reindeer Act of Sept. 1, 1937, and rules and regulations thereunder. Interpretations of the effect of grazing rights granted under the 1937 Act upon a Native allotment applicant's claim of occupancy may be applied to such a lease, if they are not to the detriment of the lessee.

A regulation pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows settlement rights to be initiated while a permit issued under that Act is in existence. The policy manifest in that regulation may be followed, in the exercise of the Secretary's discretion, to permit consideration of a Native allotment applicant's occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of

REGULATIONS--Continued

GENERALLY--Continued

Mar. 4, 1927, and the regulation was promulgated after initiation of the occupancy.

Kristeen J. Burke, Joe N. Melovedoff, Victor Melovedoff, 20 IBLA 162 (May 5, 1975)

Where the Bureau of Land Management changes an administrative practice to thereafter refuse to accept unofficial copies of the simultaneous oil and gas lease entry card, by an order dated Mar. 26, 1975, the new practice will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Feb. 1975 simultaneous filing period.

V. J. Malloy, 20 IBLA 327 (June 6, 1975)

A regulation should be so clear that there is no basis for a patent applicant's noncompliance with it before it may be so interpreted as to deprive him of a statutory right to receive title to his desert land entry. If there is doubt as to the meaning and intent of a regulation, such doubt should be resolved favorably to the applicant.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975) 82 I.D. 377

A motion for remand of a mining claim contest for further hearing on the grounds of prejudicial surprise, based upon Government counsel's failure to supplement interrogatory answers listing witnesses and exhibits as ordered in lieu of prehearing conference, will be denied where contestee's counsel ignored repeated offers of continuance made at various stages of the hearing.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

The Secretarial instruction of Oct. 18, 1973, which mandates a showing by a Native allotment applicant of 5 years of occupancy prior to a withdrawal of the land, was not required to be published as rulemaking since 5 U.S.C. § 553(a)(2) (1970) exempts from its ambit matters pertaining to public property.

Heirs of Dorothy Gordon, 22 IBLA 213 (Oct. 15, 1975)

The Secretarial guideline of Oct. 18, 1973, that a Native allotment application should be rejected when the applicant fails to show 5 years of use and occupancy prior to a withdrawal of the land: (a) is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970); and (b) is a proper exercise of the discretion vested in the Secretary by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), the application of which does not violate any right of the allotment applicant.

Herman Joseph (On Reconsideration), 22 IBLA 266 (Oct. 30, 1975)

Even if it be established that a controlling regulation had been violated in previous cases, such violation does not afford a valid predicate for further violations of the regulation.

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

REGULATIONS--Continued

GENERALLY--Continued

Where the Bureau of Land Management ordered on Mar. 26, 1975, that unofficial copies of the simultaneous oil and gas lease entry card were invalid and to be rejected, that order will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Jan. 1975 simultaneous filing period.

Eve Reese, 25 IBLA 248 (June 22, 1976)

Simultaneous oil and gas entry cards which are sent to the wrong State Office are not considered filed in the "proper office" within the meaning of 43 CFR 1821.2-2(f), and such State Office has no jurisdiction over entry cards pursuant to 43 CFR 1821.2-1(c); therefore, the filing fees for such offers should not be retained.

James H. Scott, 25 IBLA 388 (July 6, 1976)

It is proper to afford a geothermal lease applicant the benefit of a regulation, adopted after the filing of his application, absent the impairment of third party rights and adverse impact on the interests of the United States. Where a geothermal lease regulation requires the filing of a compliance bond as a condition precedent to issuance of a lease, and that regulation is amended during the pendency of an application to require such a bond only as a condition precedent to entry on the leased lands, the holder of the application may be granted a lease under the amended requirement, if all else be regular.

Christopher A. Marks, 26 IBLA 84 (July 19, 1976)

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Bilite Aggregate Co., 26 IBLA 197 (Aug. 11, 1976)

Even assuming that a BLM order has the force and effect of a regulation, it cannot be applied retroactively where there are intervening rights or the interests of the United States would be adversely affected. Where there is a No. 2 oil and gas drawing card, it constitutes an intervening right.

Beverly J. Steinbeck, 27 IBLA 249 (Oct. 18, 1976)

An oil and gas lease offer must be rejected as to lands applied for which are held in trust for Indians and are not available under the Mineral Leasing Act. Even though the minerals in these lands have been reserved to the United States, mineral development is not possible at this time because the language of the exchange act under which the lands were acquired requires further promulgation of special regulations by the Secretary as a condition precedent to such development.

Thomas D. Chace, 31 IBLA 13 (June 17, 1977)

REGULATIONS--Continued

GENERALLY--Continued

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

The promulgation or revocation of a regulation is within the special authority of the Secretary of the Interior and a limited number of delegates. A regulation when promulgated is binding upon departmental officials.

The requirement in the Administrative Procedure Act, 5 U.S.C. § 553(d) (1970), that the required publication of a substantive rule be made not less than 30 days before its effective date is satisfied by publication of proposed rulemaking with a 30-day comment period, followed thereafter by final rulemaking. Minor changes in a final rule from the proposed rule do not require new proposed rulemaking.

Assuming, *arguendo*, the applicability of the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970), to an amendment of 43 CFR 3103.3-2 increasing the rental rate of noncompetitive oil and gas leases, the provisions of the Act were satisfied where the proposed increase was published as proposed rulemaking on Mar. 18, 1976, to be effective July 1, 1976, and final rulemaking was published Jan. 5, 1977, changing the effective date of the rental increase to Feb. 1, 1977.

C. R. Gaither et al., 32 IBLA 106 (Sept. 12, 1977)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Verner P. Sorensen, 32 IBLA 381 (Oct. 21, 1977)

Donald H. Little, 37 IBLA 1 (Sept. 6, 1978)

Dermot S. McGlinchey, 38 IBLA 211 (Dec. 6, 1978)

Juan Munoz, 39 IBLA 72 (Jan. 24, 1979)

Charles and Pete Caress, 41 IBLA 302 (June 29, 1979)

Gary Milske, 44 IBLA 21 (Nov. 6, 1979)

Sec. 310 of the Federal Land Policy and Management Act of 1976 provides that, prior to promulgation of new regulations, the Secretary will administer the public lands under existing regulations to the extent practical. Issuance of a right-of-way permit for an electrical power transmission line prior to the promulgation of new regulations under sec. 504 of the Act is permissible under the authority in sec. 310.

The fact that various of the existing regulations in 43 CFR Part 2800, governing issuance of rights-of-way, are not wholly consistent with the Federal Land Policy Management Act of 1976 does not render invalid a BLM decision granting a right-of-way under the authority of sec. 310 of that Act.

David Smith Ranches et al. (Appellants), Colorado Ute Electric Ass'n, Inc. (Intervenor), 33 IBLA 7 (Nov. 15, 1977)

REGULATIONS--Continued

GENERALLY--Continued

The promulgation or revocation of a regulation is within the special authority of the Secretary of the Interior and a limited number of delegates. A regulation, when promulgated, is binding upon all Departmental officials.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

A past incorrect application of the law in adjudication of oil and gas lease offers is no authorization for failure to follow regulations in the case of an offer currently under adjudication.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. Where land has been included in a designated primitive area in derogation of the criteria established by regulation, the designation must be canceled as to such land.

Keith S. Bush, 36 IBLA 7 (July 12, 1978)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. An application for a right-of-way pursuant to 43 CFR 2802.1-1 which does not comply with the clear and unequivocal requirements of the regulation must be rejected.

Personnel of BLM are not required to alter, modify, or correct an application for a right-of-way in order to conform such application to the requirements of the regulation under which it was filed.

Beehive Telephone Co., Inc., 38 IBLA 80 (Nov. 9, 1978)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. A grazing lease is properly canceled where the lessee fails to pay the rental pursuant to 43 CFR 4125.1-1(h) and 4125.1-1(m)(3). The Boards of Appeal of this Department have no authority to declare a Secretary's regulation invalid.

Sombrero Ranches, Inc., 38 IBLA 327 (Dec. 19, 1978)

As an amendment to the Alaska Native Claims Settlement Act, P.L. 94-204 (89 Stat. 1145, 43 U.S.C. § 1611 (Supp. IV, 1974)), is subject to both the provisions of ANCSA and the regulations promulgated to implement ANCSA, unless such provisions or regulations conflict with, or are specifically excepted or preempted in the amendment.

Appeal of Cook Inlet Region, Inc., 3 ANCAB 111 (Dec. 27, 1978) 85 I.D. 462

The Secretary could establish general policy in right-of-way regulations which would provide specific guidelines for determining how much uncertainty about use will prevent the processing of right-of-way applications.

Federal Land Policy and Management Act's Effect on the Right-of-Way Application for the Middle Fork Reservoir on the Powder River, Wyoming, M-36900 (Jan. 12, 1979) 86 I.D. 293

REGULATIONS--Continued

GENERALLY--Continued

In view of 43 U.S.C.A. § 1752(c) (West Supp. 1976), which dictates that in certain circumstances the present grazing user shall have a right of first refusal for any new lease, 43 CFR 4110.5 (43 FR 29070), must be read *in pari materia* therewith and with 43 CFR 4130.2(e) (43 FR 29072) to be construed as a valid regulation and must be interpreted not to apply where the present grazing user desires a new lease and otherwise meets the statutory and regulatory criteria.

Harvey Sheehan and Hazel Holland Hudon, 39 IBLA 56 (Jan. 16, 1979) 86 I.D. 51

Where a mining claim is located after the enactment of the Federal Land Policy and Management Act of 1976 (Oct. 21, 1976), but before the date of promulgation of regulations implementing the statutory requirements of the Act relative to the recordation of mining claims, a regulation having retroactive effects may nonetheless be sustained in spite of such retroactivity if it is reasonable.

Albert O. Jensen, 39 IBLA 62 (Jan. 17, 1979)

Persons dealing with the Government are presumed to have knowledge of pertinent rules and regulations, regardless of their actual knowledge of what is contained in such regulations.

University of the Trees, 40 IBLA 74 (Mar. 16, 1979)

John A. Steele, Jr., 41 IBLA 49 (May 29, 1979)

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations.

Dale C. Delor, 40 IBLA 88 (Mar. 22, 1979)

A noncompetitive oil and gas lease issued for lands which, at the time of the lease application, had been posted erroneously as available for leasing but were then included in a prior lease, will be allowed to continue in effect where the first lease expired before the second lease issued and no questions of public policy or third party rights are contravened by the lease issuance.

Reed Gilmore, 40 IBLA 139 (Mar. 29, 1979)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. Where a patent application regulation requires "full, true, and complete abstracts," and the surface of the mining claim has not been patented, the processing of patent applications accompanied only by limited abstracts is properly suspended, pending compliance with the regulation. Where, however, the surface of the mining claim has been patented, *e.g.*, under the Stock-Raising Homestead Act, 43 U.S.C. §§ 291-300 (1970), the abstract generally need only reflect transactions affecting the mineral estate. A certificate of title is acceptable in lieu of an abstract in either situation.

Kerr-McGee Nuclear Corp., et al., 41 IBLA 197 (June 22, 1979)

REGULATIONS--Continued

GENERALLY--Continued

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Such regulations have the force and effect of law and are binding on the Department.

Fred S. Ghelarducci, 41 IBLA 277 (June 28, 1979)

Bernard E. Gencorelli, 43 IBLA 7 (Sept. 11, 1979)

The Board of Land Appeals of the Department has no authority to declare a Secretary's regulation invalid.

Tucker and Snyder Exploration, Inc., 43 IBLA 235 (Oct. 10, 1979)

The evidence of title, required by 43 CFR 3862.1-3 to be submitted in support of a mineral patent application need reflect only documents such as deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each location. It is not necessary that the title data reflect in addition those deeds, instruments, or actions otherwise relating to the land in the mining claim.

Kerr-McGee Nuclear Corp. et al. (On Reconsideration), 43 IBLA 348 (Oct. 29, 1979)

In the absence of public interest considerations and intervening rights, a regulation amendment which would benefit a pending public land matter may be applied to it. However, where the application is not in compliance with the amendment, the application must fail.

R. P. Wadleigh, 44 IBLA 11 (Nov. 6, 1979)

APPLICABILITY

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first-qualified applicant in the event the Department decides to issue a lease.

Richard W. Bowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

Where applications for a right-of-way and a special land-use permit are filed in conformity with the requirements of regulations then in effect, and the regulations are amended while final action on the applications is pending, but the amended regulations are made effective at a future date, then if the right-of-way and permit are issued prior to the effective date of the amendments they will not be subject to the added requirements; but if the applications are still pending when the amendments become effective, the new regulations will govern.

Arizona Public Service Co., 20 IBLA 120 (Apr. 25, 1975)

REGULATIONS--Continued

APPLICABILITY--Continued

While 43 CFR 4.470(b) bars subsequent challenge to "matters adjudicated" in a final decision of a District Manager when no appeal of that decision is undertaken, the presence or absence of excess forage in successive growing seasons is not a matter subject to this prohibition.

Ervin J. Crowder, 20 IBLA 305 (May 30, 1975)

To the extent they do not vitiate the purposes or provisions of the Alaska Native townsite law, the provisions of the non-Native Alaska townsite law are to be applied in the disposition of Native townsite lands; in such cases, references to the Act of Mar. 3, 1891, 43 U.S.C. § 732 (1970), in the documents relating to a Native townsite are not *pro forma*, and the non-Native townsite provisions may be applied.

City of Klawock v. P. H. Andrew et al. City of Klawock v. State of Alaska, Department of Highways, 24 IBLA 85 (Feb. 25, 1976) 83 I.D. 47

A district manager's failure to hold an Advisory Board meeting on a grazing applicant's protest is mooted by a subsequent regulatory amendment terminating graziers' rights to an Advisory Board meeting on protests. In any event, the case would not be remanded for such a meeting when there is no prejudice because the applicant is foreclosed by the grazing regulations from the possibility of prevailing on his protest.

Phil J. Hillberry, 24 IBLA 283 (Mar. 31, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed State application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

To the extent that the provisions of the non-Native townsite law do not vitiate the purposes of provisions of the Alaska Native townsite law, the provisions of the non-Native townsite law are to be applied in the disposition of Native townsite lands.

Leona B. Strang, 26 IBLA 144 (Aug. 2, 1976)

Even assuming that a BLM order has the force and effect of a regulation, it cannot be applied retroactively where there are intervening rights or the interests of the United States would be adversely affected. Where there is a No. 2 oil and gas drawing card, it constitutes an intervening right.

Beverly J. Steinbeck, 27 IBLA 249 (Oct. 18, 1976)

REGULATIONS--Continued

APPLICABILITY--Continued

Where a regulation is amended in a way that benefits an applicant, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases.

Duncan Miller, 28 IBLA 292 (Dec. 27, 1976)

Where a regulation is amended in a way that benefits an oil and gas lessee, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases.

Howard S. Hughes, 29 IBLA 30 (Feb. 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date.

Raymond N. Joeckel, 29 IBLA 170 (Mar. 14, 1977)

Milton J. Lebsack, 29 IBLA 316 (Mar. 30, 1977)

Doris M. Sterkel, Richard L. Sterkel, 30 IBLA 39 (Apr. 12, 1977)

Y O Exploration, Inc., 30 IBLA 209 (May 20, 1977)

Francis L. Hill, 32 IBLA 202 (Sept. 16, 1977)

Thomas G. Fails et al., 32 IBLA 302 (Sept. 30, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Raymond N. Joeckel et al., 30 IBLA 32 (Apr. 11, 1977)

Karen Cotter et al., 30 IBLA 88 (Apr. 27, 1977)

Duncan Miller, 30 IBLA 90 (Apr. 27, 1977)

William C. Kirkwood, 31 IBLA 178 (July 5, 1977)

Duncan Miller, 31 IBLA 349 (July 22, 1977)

Fred Goodstein, 32 IBLA 25 (Aug. 31, 1977)

Paul Landis, 32 IBLA 374 (Oct. 31, 1977)

Jerry Chambers, 33 IBLA 323 (Jan. 16, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date.

Jary J. Hunnicutt et al., 30 IBLA 86 (Apr. 27, 1977)

REGULATIONS--Continued

APPLICABILITY--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued pursuant to the simultaneous filing procedures where the drawing was held prior to the effective date of the rent increase, and leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Casey C. Janson et al., 30 IBLA 134 (May 12, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued to successful offerors at simultaneous drawings held prior to the effective date of the rate increase.

Melvin B. Hobgood, 30 IBLA 163 (May 18, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn prior to the effective date of the increase.

Marie A. Fiel et al., 30 IBLA 308 (June 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date.

Guy N. Willis, 30 IBLA 344 (June 8, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

Wanda C. and William P. Scheidt, et al., 30 IBLA 346 (June 8, 1977)

William S. Schichtanz, 32 IBLA 20 (Aug. 31, 1977)

Vern K. Jones et al., Madian K. Hartley, 33 IBLA 74 (Dec. 6, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate applies to all leases issued after that date, regardless of the date the offer to lease or drawing entry card was filed.

Duncan Miller, 30 IBLA 350 (June 8, 1977)

REGULATIONS--Continued

APPLICABILITY--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offer was filed prior to the date of the regulation. The imposition of the increased rate is not discriminatory as it applies to all leases issued after a certain date.

Guy N. Willis, 30 IBLA 373 (June 10, 1977)

The filing of a noncompetitive oil and gas lease offer, prior to acceptance, does not create any right to a lease or legal interest which restricts the discretionary authority of the Secretary of the Interior over lease issuance. Thus, an amended regulation raising the lease rental charge may be applied to lease offers which have been previously filed but not accepted and such action is not violative of the Fifth Amendment.

Barbara A. Joeckel, 30 IBLA 376 (June 10, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

Altex Oil Corp., 32 IBLA 18 (Aug. 31, 1977)

Altex Oil Co., 32 IBLA 44 (Sept. 2, 1977)

Altex Oil Corp., 32 IBLA 390 (Nov. 7, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date pursuant to over-the-counter offers or pursuant to the simultaneous filing procedures, even though the offers or entry cards were filed with BLM prior to the specified date.

D. R. Gaither et al., 32 IBLA 106 (Sept. 12, 1977)

The filing of an application for a noncompetitive oil and gas lease, prior to acceptance, does not create a right to a lease immune from application of a subsequently amended administrative regulation. An increased rental rate is properly applied to an oil and gas lease offer pending before the effective date of the rate change but which has not been accepted prior to that time.

Viola J. Kirkwood, 32 IBLA 199 (Sept. 16, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date. The filing of an application for a lease prior to its acceptance does not create a right to a lease which is immune from application of a subsequently amended administrative regulation, nor does administrative delay

REGULATIONS--Continued

APPLICABILITY--Continued

in the processing of the lease offer preclude proper application of such regulation.

Paul C. Rohlman, 32 IBLA 240 (Sept. 21, 1977)

Increased per acre rental, as directed under Jan. 5, 1977, revision of 43 CFR 3103.3-2(a), is applicable to all noncompetitive oil and gas leases issued after Feb. 1, 1977, including leases for which offers, both simultaneous and over-the-counter, were filed prior to revision of the regulation.

Duncan Miller et al., 32 IBLA 289 (Sept. 27, 1977)

The filing of an application for modification of an existing coal lease does not give rise to a vested property right. Thus, such an application qualifies as neither a valid existing right excepted from application of the acreage limit on lease modifications set by the Federal Coal Leasing Amendments Act of 1975 nor a right protected by the Fifth Amendment from application of subsequently amended statutes or regulations.

Nevada Electric Investment Co., 33 IBLA 3 (Nov. 14, 1977)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to an over-the-counter offer filed prior to the specified date.

Dean W. Rowell, 33 IBLA 30 (Nov. 22, 1977)

There is no estoppel applicable to the Department of the Interior where it has changed a clearly erroneous regulation to comport with an amendment to the oil and gas leasing laws enacted some 15 years previously. The Department is not precluded from correcting that which is "clearly erroneous."

Yates Petroleum Corp., 34 IBLA 7 (Feb. 8, 1978)

A regulation, amended in a manner that benefits a pending application for an oil and gas lease, may be applied to the pending application in the absence of intervening rights or public interest.

Repeal of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property gives priority to an otherwise regular offer which would have had to be rejected under the former regulations, as of the effective date of the repeal, provided that no offers qualified under the former regulation have been received prior to repeal, and that the offer has not been rejected prior to repeal.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as applications under the Federal Land Policy and Management Act of 1976, but, to the extent practical, existing regulations will govern the administration of the public lands until new regulations are issued.

Where a regulation requiring reimbursement of certain costs incurred by the United States in the processing of right-of-way applications is promulgated, the cost

REGULATIONS--Continued

APPLICABILITY--Continued

reimbursement provision is applicable to an application filed prior to and pending on the effective date of the regulation.

Continental Telephone of California, 34 IBLA 374 (May 1, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Tipperary Oil and Gas Corp., 35 IBLA 120 (May 15, 1978)

Applications for rights-of-way on public lands pending on Oct. 22, 1976, are to be considered as applications under Title V of the Federal Land Policy and Management Act of 1976, but existing regulations will govern the administration of public lands to the extent practical until new regulations are promulgated.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

Donald R. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

To the extent that the provisions of the non-Native townsite law do not vitiate the purposes of provisions of the Alaska Native townsite law, the provisions of the non-Native townsite regulations may be applied in the disposition of Native townsite lands.

Nancy A. Delkittie, 35 IBLA 370 (June 23, 1978)

An oil and gas lessee is properly required to pay the higher rental prescribed by duly promulgated regulations of the Department where all or part of the lands in the lease have been included within the known geologic structure of a producing oil or gas field. However, where a discovery is made on the leased lands, at the expiration of that lease year the lease goes on a minimum royalty basis. 43 CFR 3103.3-5.

Andrew W. Brainerd, 36 IBLA 304 (Aug. 21, 1978)

A final Departmental appellate decision construing a regulation will be given immediate effect, and will not be applied with prospective effect only, unless the decision alters materially the interpretation given the regulation by earlier Departmental decisions or official published opinions, and unless the equitable benefit of the decision is not outweighed by ill effects of allowing a benefit in derogation of the regulation.

D. E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978)
85 I.D. 408

Gertrude H. D'Amico, 39 IBLA 68 (Jan. 17, 1979)

The interpretation of an existing regulation by this Board to determine its applicability to the facts at hand does not constitute rulemaking by the Board.

H. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

REGULATIONS--Continued

BINDING ON THE SECRETARY

A Departmental regulation promulgated pursuant to and comporting with statutory authority has the force and effect of law. One who exercises the delegated authority of the Secretary may not disregard the plain and unambiguous provisions of a mandatory regulation so as to impose a more onerous requirement on an applicant than is prescribed by the regulation in effect.

Arizona Public Service Co., 20 IBLA 120 (Apr. 25, 1975)

The Secretary of the Interior is bound by his duly promulgated regulations, and such regulations have the force and effect of law.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

Elizabeth Pagedas (On Reconsideration), 40 IBLA 21 (Mar. 9, 1979)

St. Scholastica Academy, 40 IBLA 175 (Apr. 3, 1979)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Such regulations have the force and effect of law and are binding on the Department.

Fred S. Ghelarducci, 41 IBLA 277 (June 28, 1979)

Bernard E. Gencorelli, 43 IBLA 7 (Sept. 11, 1979)

FORCE AND EFFECT AS LAW

A Departmental regulation promulgated pursuant to and comporting with statutory authority has the force and effect of law. One who exercises the delegated authority of the Secretary may not disregard the plain and unambiguous provisions of a mandatory regulation so as to impose a more onerous requirement on an applicant than is prescribed by the regulation in effect.

Arizona Public Service Co., 20 IBLA 120 (Apr. 25, 1975)

In the absence of pertinent statutory directives or regulatory criteria mandating such action, it is improper for the Bureau of Land Management to reject applications filed by a State under the Act of Mar. 15, 1910, for temporary withdrawals of lands for proposed development under the Carey Act, on the basis of the Bureau's determination that the Carey Act does not permit acceptance of a temporary withdrawal application: (1) for the establishment of residence and settlement on noncontiguous tracts of land; (2) if the acreage applied for, when added to desert land entry acreage previously patented to the State's Carey Act project proposer, exceeds the maximum 320 acres permitted to be acquired by one person under 43 U.S.C. § 212 (1970); and (3) when the preliminary plan of development submitted by the State fails to provide adequate assurance of water transmission to the proposed project. Under these circumstances, the Bureau should suspend action on the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 24 IBLA 314 (Apr. 20, 1976)

REGULATIONS--Continued

FORCE AND EFFECT AS LAW--Continued

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed State application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a State under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

The Bureau of Land Management should suspend consideration of the applications under the Carey Act pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

The Secretary of the Interior is bound by his duly promulgated regulations, and such regulations have the force and effect of law.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

Elizabeth Pagedas (On Reconsideration), 40 IBLA 21 (Mar. 9, 1979)

St. Scholastica Academy, 40 IBLA 175 (Apr. 3, 1979)

The Bureau of Land Management should suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976 where no regulations have been issued under which action may be taken and where there is no contrary policy directive.

Grace Cooley Coleman, Leota Ferrell, 35 IBLA 236 (May 26, 1978)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Such regulations have the force and effect of law and are binding on the Department.

Fred S. Ghelarducci, 41 IBLA 277 (June 28, 1979)

Bernard E. Gencorelli, 43 IBLA 7 (Sept. 11, 1979)

REGULATIONS--Continued

INTERPRETATION

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George M. Crago, Richard L. Crago, 19 IBLA 208 (Mar. 21, 1975)

A regulation should be so clear that there is no basis for a patent applicant's noncompliance with it before it may be so interpreted as to deprive him of a statutory right to receive title to his desert land entry. If there is doubt as to the meaning and intent of a regulation, such doubt should be resolved favorably to the applicant.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975)
82 I.D. 377

It is proper to afford a geothermal lease applicant the benefit of a regulation, adopted after the filing of his application, absent the impairment of third party rights and adverse impact on the interests of the United States. Where a geothermal lease regulation requires the filing of a compliance bond as a condition precedent to issuance of a lease, and that regulation is amended during the pendency of an application to require such a bond only as a condition precedent to entry on the leased lands, the holder of the application may be granted a lease under the amended requirement, if all else be regular.

Christopher A. Marks, 26 IBLA 84 (July 19, 1976)

As between two preference right applicants for land offered at public sale under the Isolated Tract Act, 43 U.S.C. § 1171 (1970), departmental regulation 43 CFR 2711.4(b)(2) continues in effect pursuant to 43 U.S.C.A. §§ 1713, 1740 (West Supp. 1977) and is strictly construed with regard to the deadline for making the required showing of fee title to contiguous land.

L. A. Gillette, 33 IBLA 182 (Dec. 21, 1977)

Arizona Revised Statutes § 37-502, which provides for damages in civil actions for trespass on State lands, does not apply to cases involving right-of-way trespass on Federal lands located in Arizona.

Mountain States Telephone & Telegraph Co., 34 IBLA 154 (Mar. 10, 1978)

Regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them, or they should not be interpreted to deprive him of a preference right to a lease.

Where an offer for an oil and gas lease describes lands by reference only to the rectangular survey system, without reference to the fact that part of these unpatented lands are also within a mineral survey, the offer will be regarded as including the lands within the mineral survey if it is clear from the offer that the offeror so intended.

Bill J. Maddox, 34 IBLA 278 (Apr. 17, 1978)

REGULATIONS--Continued

INTERPRETATION--Continued

Although in his summary dismissal of private contest against homestead entry administrative law judge discussed issues upon which contestant had failed to submit corroborated allegations of fact along with his complaint, such action by judge did not relieve contestant of his burden of filing corroboration, despite provisions of 43 CFR 4.450-4(b) allowing judge to "raise issues in connection with deciding a contest."

Ernest C. Lamb v. Richard B. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

When a married woman signs her name, "Mrs. Hal McCarthy," as offeror on a drawing entry card oil and gas lease offer, and prints her full name "Geraldine M. McCarthy" on the face of the card, the card may not be rejected because she violated no regulation by signing the offer in that manner, and she followed the instructions on the face of the card by giving her first name and initial.

Geraldine M. McCarthy, 37 IBLA 323 (Oct. 25, 1978)

In view of 43 U.S.C.A. § 1752(c) (West Supp. 1978), which dictates that in certain circumstances the present grazing user shall have a right of first refusal for any new lease, 43 CFR 4110.5 (43 FR 29070), must be read *in pari materia* therewith and with 43 CFR 4130.2(e) (43 FR 29072) to be construed as a valid regulation and must be interpreted not to apply where the present grazing user desires a new lease and otherwise meets the statutory and regulatory criteria.

Harvey Sheehan and Hazel Holland Mudon, 39 IBLA 56 (Jan. 16, 1979) 86 I.D. 51

The interpretation of an existing regulation by this Board to determine its applicability to the facts at hand does not constitute rulemaking by the Board.

H. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

The maxim, *expressio unius est exclusio alterius*, will not be utilized to contradict or vary a clear expression of legislative intent.

Thomas B. Flickinger, William S. Flickinger, et al., 40 IBLA 53 (Mar. 16, 1979)

In the absence of public interest considerations and intervening rights, a regulation amendment which would benefit a pending public land matter may be applied to it. However, where the application is not in compliance with the amendment, the application must fail.

E. D. Wadleigh, 44 IBLA 11 (Nov. 6, 1979)

The regulations pertaining to the qualifications of an association as an oil and gas lease offeror (43 CFR 3102.3-1) requires, *inter alia*, separate statements setting forth citizenship and holdings only if there are members who own or control more than 10 percent of such association. If there are no members owning more than 10 percent, such statements need not be furnished.

Patrick Petroleum Co., 44 IBLA 38 (Nov. 6, 1979)

REGULATIONS--Continued

INTERPRETATION--Continued

When an offeror prints his name on the front of a drawing entry card oil and gas lease offer as "Maddox, Robert J.," and signs his name on the back of the card as "J. Robert Maddox," his usual manner of signing, the card may not be rejected because he violated no regulation by signing the offer in that manner, and he properly followed instructions on the face of the card by giving his last name first, then his first name and initial.

Robert J. Maddox, 44 IBLA 178 (Nov. 30, 1979)

PUBLICATION

Where notice of proposed rulemaking to change certain filing fees and to impose other charges has been published in the *Federal Register*, but no final rules have been published, the old schedule of fees will remain in effect until such time as the new rules are finally adopted, published and made effective.

Arizona Public Service Co., 20 IBLA 120 (Apr. 25, 1975)

Neither a Recreation and Public Purposes Act classification nor a withdrawal is a rule or regulation within the ambit of the Secretarial policy of Apr. 27, 1971, which provides for utilization of the public participation procedures of 5 U.S.C. § 553 (1976).

Delmer McLean et al., 40 IBLA 34 (Mar. 15, 1979)

VALIDITY

Where notice of proposed rulemaking to change certain filing fees and to impose other charges has been published in the *Federal Register*, but no final rules have been published, the old schedule of fees will remain in effect until such time as the new rules are finally adopted, published and made effective.

Arizona Public Service Co., 20 IBLA 120 (Apr. 25, 1975)

A regulation defining "eligible refiners" under the Act of July 13, 1946, providing for the sale of Government royalty oil or gas, as owners of existing refineries (including refineries not in operation) who qualify as a small business enterprise under the rules of the Small Business Administration and who are unable to purchase in the open market an adequate supply of crude oil to meet the needs of their existing refinery capacities, is an implementation of the Act within the ambit of the Secretary of the Interior's authority to prescribe rules and regulations.

Thunderbird Resources, Inc., 20 IBLA 248 (May 16, 1975)

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a regulation of this Department.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

In view of 43 U.S.C.A. § 1752(c) (West Supp. 1978), which dictates that in certain circumstances the present grazing user shall have a right of first refusal for any new lease, 43 CFR 4110.5 (43 FR 29070), must be read *in pari materia* therewith and with 43 CFR 4130.2(e) (43 FR 29072) to be construed as a valid regulation and must be interpreted not to apply where

REGULATIONS--Continued

VALIDITY--Continued

the present grazing user desires a new lease and otherwise meets the statutory and regulatory criteria.

Harvey Sheehan and Hazel Holland Mudon, 39 IBLA 56 (Jan. 16, 1979) 86 I.D. 51

WAIVER

Even if it be established that a controlling regulation had been violated in previous cases, such violation does not afford a valid predicate for further violations of the regulation.

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

A noncompetitive oil and gas lease applicant's failure to submit the statement of interest of the other parties in interest to the offer is not excused, nor is the Department estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease to the applicant on an offer which was deficient for the same reason.

Leon M. Flanagan et al., 25 IBLA 269 (June 24, 1976)

The requirement that a bidder in a competitive oil and gas lease sale must submit one-fifth of the amount bid with his bid is mandatory and will not be waived.

Sarkeys, Inc., 26 IBLA 141 (Aug. 2, 1976)

Even if it be established that the Department had not applied in other cases regulation 43 CFR 4115.2-1(e)(8), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

Where an applicant for grazing privileges does not show the type of misconduct which would be a basis for estoppel against the Government, the provisions of 43 CFR 4115.2-1(e)(9)(i) and (e)(13)(i) cannot be waived on the basis of such misconduct.

A. D. Findlay (Appellant), Vermillion Cliff Cattle Co. (Intervenor), 29 IBLA 262 (Mar. 25, 1977)

The failure of a noncompetitive oil and gas lease offeror to complete the date on the simultaneous oil and gas drawing entry card is not excused, and the Department is not estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease in acceptance of an offer which was deficient for the same reason.

Tina A. Hogan, 33 IBLA 213 (Dec. 21, 1977)

REGULATIONS--Continued

WAIVER--Continued

A past incorrect application of the law in adjudication of oil and gas lease offers is no authorization for failure to follow regulations in the case of an offer currently under adjudication.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

The failure of a high bidder, in an upland competitive lease sale, to submit one-fifth of the amount bid with his bid in the proper form of remittance, may not be waived where the bidder submitted a sight draft, and thus retained control of the fund until presentment and final payment.

Mesa Petroleum Co., 37 IBLA 103 (Sept. 28, 1978)

REINSTATEMENT

GENERALLY

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the lessee does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The fact the courtesy rental notice did not come to the attention of the lessee until 6 days after the rental due date is not a justifiable excuse for late payment of the rental.

Levi T. Bellah, 22 IBLA 1 (Sept. 4, 1975)

A lessee who is out of town on vacation on the lease anniversary date and who mails the lease rental payment 6 days after the due date is not reasonably diligent.

Extenuating circumstances outside the control of the lessee occurring near the anniversary date of the lease may constitute justifiable cause for a late rental payment where the circumstances are the proximate cause of the failure to make timely payment. However, where appellant has delayed payment until just before the due date and has entrusted the function to an agent whose subagent neglects to make payment timely, the lack of diligence on the part of the lessee and/or his agent and/or subagent, and not the adverse circumstances confronting appellant's agent, constitute the proximate cause of the late payment and a decision denying reinstatement will be affirmed.

Lucille Lipphardt, 24 IBLA 81 (Feb. 25, 1976)

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The inadvertence or negligence of the appellant's employee does not justify late payment of the rental.

The fact that the courtesy rental notice did not come to appellant's attention until 6 days after the rental due date is not a justifiable excuse for late payment of the rental.

James Donoghue, 25 IBLA 280 (June 25, 1976)

REINSTATEMENT--Continued

GENERALLY--Continued

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee whose payment is mailed 6 days after the due date is not reasonably diligent.

Extenuating circumstances outside the control of the lessee occurring near the anniversary date of the lease may constitute justifiable cause for a late rental payment where the circumstances are the proximate cause of the failure to make timely payment. However, where appellant has entrusted payment to an agent who becomes ill, and a subagent, who assumes the agent's responsibilities neglects to make payment timely, the illness of the agent is not the proximate cause of the late payment where no connection is made between the date of the agent's illness and the due date of the rental and a decision denying reinstatement will be affirmed.

The burden of proving that the late payment was either justifiable or not due to a lack of reasonable diligence is on the lessee, and this burden includes showing the proximity of the occurrence to the anniversary date.

Lucyann M. Cameron, 29 IBLA 141 (Mar. 4, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee whose payment is mailed more than 16 days after the due date is not reasonably diligent.

Energy Reserve, Inc., 30 IBLA 11 (Apr. 4, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. Where payment is mailed 3 days after the anniversary date and where due to a combination of trips in other vehicles, farm chores, and simple inadvertence, it was left on a car seat for 4 days, the failure to exercise reasonable diligence is not justifiable because the factor causing the delay is not one which is ordinarily outside of the control of the lessee.

Mildred M. Bernthal, Shirley M. Bernthal, 30 IBLA 18 (Apr. 7, 1977)

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. Instances of forgetfulness, simple inadvertence or ignorance of the regulations are not covered. Where payment is mailed from Binghamton, New York, to Salt Lake City, Utah, 1 day before the anniversary date the lessee cannot be said to be reasonably diligent.

An estoppel of the Government to refuse acceptance of late rental payments is not created where in the past the BLM accepted rental payments after the anniversary date pursuant to 43 CFR 3103.3-2(e)(1) providing if the office to receive payment is closed on the anniversary date, payment will be considered timely if received on the next official working day.

Adolph F. Muratori, 31 IBLA 39 (June 21, 1977)

REINSTATEMENT--Continued

GENERALLY--Continued

Reinstatement of an oil and gas lease terminated by operation of law may be allowed only where the lessee can establish to the satisfaction of the Secretary of the Interior that the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). When the only "payment" tendered timely consists of an unsigned check, it is not sufficient to satisfy the exculpatory standards of the reinstatement law and regulations.

Aubryn C. Hunsucker, 34 IBLA 316 (Apr. 24, 1978)

The burden of showing that the failure to pay annual rent for an oil and gas lease on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence is on the lessee. The fact that the lessee retained a leasing service which misrepresented that it would file appropriate assignment documents prior to the anniversary date does not justify late payment. Mailing of the annual rental payment on a date after it is due does not constitute reasonable diligence.

Saxe, Bacon and Bolan, P.C., 40 IBLA 5 (Mar. 6, 1979)

"Reasonable diligence." Allowing 1 day for mail delivery of an oil and gas lease rental demonstrates a lack of reasonable diligence, because reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to allow for normal delays in the collection, transmittal, and delivery of the payment.

"Justifiable." For a delay in submission of an oil and gas lease rental payment to be justifiable, lessee must show that the delay would not have occurred except for factors outside of his control.

"Justifiable excuse." The fact that a courtesy rental notice did not come to oil and gas lessee's attention until 1 day prior to rental due date is not a justifiable excuse for late payment of the rental.

Reid E. Motley, 43 IBLA 360 (Oct. 29, 1979)

RES JUDICATA

The doctrine of administrative finality, the administrative counterpart of res judicata, ordinarily bars reopening the issue of a permittee's class 1 base property qualifications resolved in a prior Departmental decision, but will not prevent modification of a decision to correct a conclusion inconsistent with the legal ruling of the case and apparently the result of an oversight as to the basis of the factual finding upon which it relies.

T. T. Cowgill et al., 19 IBLA 274 (Apr. 7, 1975)

The doctrine of res judicata will not bar an administrative proceeding to determine the validity of three unpatented mining claims where, in a previous condemnation action for the War Department's taking of a temporary exclusive easement covering the claims, the judgment of the Federal district court was limited solely to the compensation to be paid by the United States, and there was no litigation of the issue of the validity of the claims and no prior adjudication of that issue in the Department of the Interior.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of three mining

RES JUDICATA--Continued

claims which were the subject of a previous condemnation action for the taking by the Government of a temporary exclusive easement over the claims, where the issue of the validity of the claims was not actually litigated and it was wholly unnecessary for the court to adjudicate that issue in rendering its judgment.

United States v. A. E. Fleming et al., 20 IBLA 83 (Apr. 24, 1975)

Where an appeal has been taken and a final Departmental decision has been reached, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

A judgment is not conclusive of a fact erroneously assumed when the fact was not actually litigated and determination thereof was not essential to the decision.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

A civil action in a Federal district court condemning a mining claim for a period of years for the exclusive use of the United States does not bar a subsequent contest by the Department of the Interior challenging the validity of the claim.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

A Federal district court jury verdict in a suit to cancel desert land patents, that the entrymen and their purchaser under an illegal executory contract did not commit fraud against the United States, does not collaterally estop this Department from adjudicating a contest grounded on the illegal executory contract against the purchaser's own entry, because the legal standard applicable in the subsequent contest is different than that in the fraud action--a desert land entry can be subject to cancellation for acts that do not constitute fraud.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

Where a decision by an officer of the Department has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

While the Department of the Interior does not rigidly apply the doctrine of administrative finality so as to bar any subsequent reassertion of soldier's additional homestead scrip rights which have been determined to be invalid, it is incumbent upon an applicant seeking to exercise such rights to submit compelling legal or equitable reasons for reconsideration.

Where an applicant seeks to assert a soldier's additional homestead right which has been determined to be invalid in an earlier proceeding, and does not submit compelling legal or equitable reasons for reconsideration, but merely seeks to reargue the previous determination, the attempted exercise of soldier's additional homestead rights will be rejected.

George Bodda, Jr., 27 IBLA 186 (Oct. 8, 1976)

A request to reconsider a 1968 decision by the Department rejecting final proof for a homestead entry and canceling the entry is properly rejected in the absence of a showing of "extraordinary circumstances." In the absence of compelling legal or equitable reasons for reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

Where a State swampland selection has been rejected on the ground that the land selected has been disposed of, but in fact that land was available to the State, the judgment is valid and binding until set aside. Since the Secretary has jurisdiction to determine whether the land selected is available, he has jurisdiction to decide erroneously. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land to a color of title applicant's predecessor, and an adverse right has intervened.

John Stuart Hunt, Sherman M. Hunt, 31 IBLA 304 (July 22, 1977) 84 I.D. 421

In order for a State to receive legal title to a swampland selection, the Secretary of the Interior or his delegate must determine that the land is swamp in character and available for disposition under the grant. An erroneous decision that selected land is unavailable because it was sold prior to the selection is valid and binding until set aside. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land at a tax sale to the predecessor in interest of a color of title applicant, and an adverse right, i.e., a class 2 color of title application, has intervened.

White Castle Lumber and Shingle Co., Ltd., 32 IBLA 129 (Sept. 12, 1977)

The doctrine of finality of administrative action, counterpart of res judicata, designed to achieve orderliness in the administration of public lands, bars reconsideration of a 1936 General Land Office decision, rendered according to procedures then in effect, which canceled a stock-raising homestead entry and from which no appeal was taken.

John Lynn Brough, 33 IBLA 36 (Nov. 25, 1977)

When BLM adjudicates issue and offeror does not appeal, doctrine of administrative finality, which is administrative counterpart of res judicata, generally bars consideration of new appeal arising from later proceeding involving same lease and same issue. Accordingly, BLM acted properly in dismissing appellant's protest, filed Nov. 16, 1977, against oil and gas lease annual rental adjudicated on July 27, 1977.

Wilfred Plomis, 35 IBLA 1 (May 3, 1978)

RES JUDICATA--Continued

A request to reconsider a final decision of the Department rejecting applications for homestead entry is properly rejected in the absence of a showing of extraordinary circumstances. Except where compelling legal and equitable reasons for reconsideration are shown, the principle of res judicata and its counterpart, finality of administrative action, will bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Dallas C. Coalman et al., 36 IBLA 119 (July 25, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer was not proper and must be rejected, the applicant may not thereafter appeal the matter to this Board merely because the Bureau of Land Management, in implementing the Board's decision, mistakenly advised him that he had the right to such an appeal. The matter is res judicata, and the subsequent appeal must be dismissed.

Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that certain coal prospecting permits have terminated and that no preference right to a coal lease is attached to any of them, an unapproved assignee of the permits may not thereafter appeal the matter to this Board following Bureau of Land Management notification to the permittees of this Board's decision. The matter is res judicata and such subsequent appeal must be dismissed, absent compelling legal or equitable considerations.

Peabody Coal Co., 36 IBLA 242 (Aug. 14, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer may properly be rejected for the reason that title to the lands involved was uncertain, and a new lease offer for the same lands is again rejected for the same reason, the matter is res judicata, and the subsequent appeal is properly dismissed.

N. L. Industries, Inc., 37 IBLA 335 (Oct. 26, 1978)

Relitigation of the issue of discovery is barred by the principle of res judicata and its corollary, collateral estoppel, insofar as the same lands, parties, and claims are involved, absent compelling legal or equitable reasons for reconsideration.

Under principles of res judicata, a judgment is binding upon all parties to the proceedings in which it is rendered and to their privies. Privity denotes a mutual or successive relationship to the same right in property. Privity exists within the meaning of the doctrine of res judicata to bind a subsequent grantee, transferee, or lienor of property.

United States v. Leroy S. Johnson et al., 39 IBLA 337 (Feb. 28, 1979)

The principle of res judicata does not operate to bar consideration of a new Alaska Native allotment application under 43 U.S.C. §§ 270-1 through 270-3 (1970), despite previous denial of a prior application, when the initial adjudication was confined to a single issue, which issue is irrelevant under a later interpretation of the statute.

Rika Murphy, Gene H. Smagge, 42 IBLA 51 (July 31, 1979)

RES JUDICATA--Continued

A summary dismissal of a private contest against an Alaska homestead becomes a final administrative ruling on that contest when the contestant, instead of appealing the dismissal, files a second contest which must be considered an entirely new action. When a final departmental adjudication has been made, the doctrine of administrative finality, which is the administrative counterpart of the principle of res judicata, generally bars consideration of a new appeal arising from a later proceeding involving the same homestead and the same issue.

Joe O. Amberger, 43 IBLA 178 (Sept. 28, 1979)

In the absence of compelling legal and equitable reasons supporting reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim, the same parties, and the same issues.

Western Slope Gas Co. (On Reconsideration), 43 IBLA 259 (Oct. 15, 1979)

A notice of appeal from Geological Survey's failure to approve a communitization agreement must be filed within 30 days after appellant is served with the decision thereof or the doctrine of administrative finality generally bars consideration of the same issue in a later appeal.

Gulf Oil Corp., 44 IBLA 292 (Dec. 26, 1979)

RIGHTS-OF-WAY

(*See also* Indian Lands, Outer Continental Shelf Lands Act, Reclamation Lands--if included in this Index.)

GENERALLY

Where an appraisal has followed established criteria in calculating the fair market value of rental for a right-of-way, it will be affirmed, absent a showing by positive and substantial evidence that the appraisal is in error.

Western Slope Gas Co., 21 IBLA 119 (July 14, 1975)

Where a protest against the United States entering into a compensatory royalty agreement pertaining to oil and gas underlying a railroad right-of-way pursuant to the Act of May 21, 1930, 46 Stat. 373, 30 U.S.C. § 301 *et seq.* (1970), is based upon an assertion that the protestants have title to the oil and gas under the right-of-way, the protest will be properly dismissed if it is found the United States has title to those minerals.

Brown v. Cannon, Jr., et al., 24 IBLA 166 (Mar. 16, 1976) 83 I.D. 80

Improvement of land by a road, and use of the land for access to a private inholding do not by themselves qualify the locator to purchase the land as a trade and manufacturing site.

Evelyn M. Bunch, 25 IBLA 44 (May 13, 1976)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

The Act of July 26, 1866, R.S. 2477, 43 U.S.C. § 932 (1970), grants a right-of-way for the construction of highways over public lands not reserved for public uses. Where the Bureau of Land Management closes a 400-foot haul road, formerly part of a right-of-way issued to the Oregon State Highway Department on Oregon and California revested land for a material site, without considering the implications of the statute, and appellant submits evidence showing that the road has been used by the public for many years, the decision will be set aside and the case will be remanded for a determination of whether a highway has already been established under the statute or, if not, to afford appellant an opportunity to file an application for a right-of-way under 43 CFR 2822.1-2.

Homer D. Meeds, 26 IBLA 281 (Aug. 26, 1976)
83 I.D. 315

In the absence of legislation by Congress, a patent from the United States does not convey an implied easement by way of necessity across public land.

In order to establish an easement by way of necessity, the requisite necessity must exist at the time of the conveyance. Moreover, if the necessity ceases to exist, the easement also ceases to exist. When other means of access are available, even though less convenient, a way of necessity will not be recognized or the implication becomes subject to control of other circumstances.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976)
83 I.D. 518

Public land within one-quarter mile of the banks of a river designated by Act of Congress for potential addition to the national wild and scenic rivers system is withdrawn by statute from entry, sale, or other disposition under the public land laws of the United States for a designated period to allow a study of the suitability of the river for inclusion in the system and a report to Congress thereon. This withdrawal, however, does not preclude a right-of-way grant which does not involve a conveyance of title or rights leading thereto.

The Secretary has the discretionary authority to grant a right-of-way application which includes an area designated for potential addition to the national wild and scenic rivers system where it is determined to be in the public interest. In the exercise of that discretion it is appropriate to consider the suitability of the subject area for inclusion in the system, classification of the characteristics (wild, scenic, or recreational) of the river area, and whether such a land use will unreasonably interfere with the values disclosed.

Lower Valley Power & Light, Inc., 29 IBLA 107 (Feb. 23, 1977)

Where a right-of-way application has been rejected in part, an appeal therefrom should be dismissed if not filed within the period prescribed in 43 CFR 4.411.

When a right-of-way applicant fails to submit corrected maps and payment of charges within a reasonable time after notice, which notice does not prescribe a specific time therefor, but on appeal applicant explains the reasons for delay, a rejection of the application may be set aside and the case remanded.

Jerrold B. Cooley, Lucy M. Cooley, 32 IBLA 387 (Nov. 7, 1977)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

Sec. 310 of the Federal Land Policy and Management Act of 1976 provides that, prior to promulgation of new regulations, the Secretary will administer the public lands under existing regulations to the extent practical. Issuance of a right-of-way permit for an electrical power transmission line prior to the promulgation of new regulations under sec. 504 of the Act is permissible under the authority in sec. 310.

The fact that various of the existing regulations in 43 CFR Part 2800, governing issuance of rights-of-way, are not wholly consistent with the Federal Land Policy Management Act of 1976 does not render invalid a BLM decision granting a right-of-way under the authority of sec. 310 of that Act.

Sec. 505, Federal Land Policy and Management Act of 1976, does not require that preliminary planning considerations be enumerated on the face of a grant of a right-of-way.

The third party participation provision of sec. 102(a)(5), Federal Land Policy and Management Act of 1976, is entirely satisfied by a series of public hearings held prior to the grant of a power transmission right-of-way.

David Smith Sanches et al. (Appellants), Colorado Ute Electric Ass'n, Inc. (Intervenor). 33 IBLA 7 (Nov. 15, 1977)

An applicant has no right to a hearing in connection with original Federal charges for use and occupancy of a communication site, and in the absence of any specific assertion showing error in the appraisal, the appraisal will be sustained on appeal if it is properly formulated.

When a parcel of land is properly determined to have a highest and best use for communication site purposes, an annual use charge based on the fair market value of the right-of-way grant may be determined by comparison with value of the right of use for similar sites and by making whatever adjustments may be necessary because of differences in factors influencing value.

Under sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1764(g) (West Supp. 1977), charges for rights-of-way on public lands are in general to be paid annually rather than in advance for a longer period pursuant to 43 CFR 2802.1-7(a).

XYZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

A communication site right-of-way granted on Sept. 2, 1959, pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1970), is subject to the periodic reappraisal under the terms of the specific grant and applicable regulations then in effect, 43 CFR 244.21(b) and (f) (1954).

Second party utilization of a communication site right-of-way granted on Sept. 2, 1959, pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1970), is subject to BLM authorization under the governing regulation, 43 CFR 244.18(a) (1954).

James W. Smith, 34 IBLA 146 (Mar. 10, 1978)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

Arizona Revised Statutes § 37-502, which provides for damages in civil actions for trespass on State lands, does not apply to cases involving right-of-way trespass on Federal lands located in Arizona.

Mountain States Telephone & Telegraph Co., 34 IBLA 154 (Mar. 10, 1978)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as applications under the Federal Land Policy and Management Act of 1976, but, to the extent practical, existing regulations will govern the administration of the public lands until new regulations are issued.

Where a regulation requiring reimbursement of certain costs incurred by the United States in the processing of right-of-way applications is promulgated, the cost reimbursement provision is applicable to an application filed prior to and pending on the effective date of the regulation.

Continental Telephone of California, 34 IBLA 274 (May 1, 1978)

An oil and gas lease offer for lands in a reservoir right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1970), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

Where the official records of the Bureau of Land Management show a reservoir right-of-way affecting certain land, the oil and gas therein may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970). This result follows even though the reservoir right-of-way may have been issued improperly or should have been terminated.

Republic Oil & Mining Co. and Margaret V. Coombs, 35 IBLA 212 (May 26, 1978)

A request for rent-exempt status for a right-of-way granted for telephone poles and lines pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1970), is properly denied where the terms of the grant clearly state that the grant is made in consideration of periodic rental payments and contains no authorization for rent-exempt status.

"Rural Electrification Administration projects." A right-of-way holder is not excused from payment of rental under 43 CFR 2802.1-7(c), by virtue of holding an REA loan, where such holder is neither a cooperative or nonprofit organization.

Continental Telephone of the West, 35 IBLA 279 (June 2, 1978)
85 I.D. 186

Applications for rights-of-way on public lands pending on Oct. 22, 1976, are to be considered as applications under Title V of the Federal Land Policy and Management Act of 1976, but existing regulations will govern the administration of public lands to the extent practical until new regulations are promulgated.

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. Where an appellant has raised sufficient doubt that the Bureau properly considered the highest and best use of a right-of-way in determining comparability of other sites as a basis for the use charges, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but are only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Interest may be imposed on use charges for right-of-way sites depending on considerations of fairness and equity. In the absence of contrary directives, interest may be imposed for occupancy of a site where use charges should have been imposed at the same rate as past permitted use. Also, interest may be imposed on increased charges due on an annual basis for the years prior to payment of such amount.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

Where, on appeal, a grantee of a right-of-way makes a substantial showing of error in the revision of the rental rate for use of the right-of-way, and where the State Office has not had an opportunity to consider the grantee's arguments, a decision dismissing a protest to the revised rental rate will be set aside and the case will be remanded in order to afford the State Office an opportunity to review its appraisal in light of the grantee's contentions.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

Oil and gas under a reservoir right-of-way may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970), but may only be leased to the holder of the right-of-way, his assignee, or to adjacent owners or their lessees in accordance with the Act of May 21, 1930, 30 U.S.C. § 301 (1970); therefore, offers filed under the Mineral Leasing Act for such lands are properly rejected.

Alice Hays, 36 IBLA 313 (Aug. 23, 1978)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as filed under the Federal Land Policy and Management Act of 1976.

Arnold E. Hedell, 37 IBLA 22 (Sept. 12, 1978)

10 U.S.C. § 2669 (1976) authorized the Secretary of a military department to grant an easement for a right-of-way over land permanently withdrawn or reserved for the use of that department and other land under his control. This language was all-inclusive and permitted the Secretary of the Army to issue a revocable permit for a pipeline over land withdrawn for the use of the Army regardless of whether the withdrawal be permanent or temporary.

In the construction or interpretation of contracts, the primary purpose and guideline is the intention of the parties. A contract must be construed as a whole and the intention of the parties is to be collected from the entire instrument. Individual words and phrases must be considered in connection with the rest of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and grants appellant a rental-free revocable permit to enter the "service location," for any purpose under the contract including use of the sites for installation, operation, and maintenance of the facilities, the contract can be interpreted as granting appellant a rental-free revocable permit for a right-of-way for a gas pipeline.

In construing an ambiguous contract, the conduct of the parties in relation to such contract is to be considered in determining the meaning of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and the appellant constructs a pipeline pursuant to the contract, it is reasonable to interpret the contract as providing a revocable permit for a right-of-way for such pipeline.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not with some particularity show adequate reason for appeal and support the allegations with evidence showing error.

Valley Mobile Communications, Inc., 38 IBLA 359 (Dec. 29, 1978)

Applications for rights-of-way on public lands pending on Oct. 22, 1976, are to be considered as applications under Title V of the Federal Land Policy and Management Act of 1976, but existing regulations will govern the administration of public lands to the extent practical until new regulations are promulgated.

As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if no error is shown in the appraisal methods used by the Bureau of Land Management and the

appellant fails to show by convincing evidence that the charges are excessive. Where an appellant has raised sufficient doubt that the Bureau properly considered the highest and best use of a right-of-way in determining comparability of other sites as a basis for the use charges, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but may be only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Interest may be imposed on use charges for right-of-way sites depending on considerations of fairness and equity. In the absence of contrary directives, interest may be imposed for occupancy of a site where use charges should have been imposed at the same rate as past permitted use. Also, interest may be imposed on increased charges for the period commencing with the date from which increased charges are established.

Where, on appeal, application for renewal of communication site rights-of-way was approved subject to condition of a lump-sum payment of an increased rental without a hearing, the decisions below will be set aside and the cases remanded for hearing and for other revisions consistent with principles enunciated in Board decisions to be followed in renewal of communication site rights-of-way and in setting increases in the amount of rental for such sites.

Donald B. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

Pending applications for rights-of-way filed under the Acts of Feb. 15, 1901, and Mar. 4, 1911, shall be considered as applications under the Federal Land Policy and Management Act of 1976.

The granting of a right-of-way under FLPMA and the superseded Acts of Feb. 15, 1901, and Mar. 4, 1911, is within the Secretary's discretion and neither the filing of the application nor the existence of improvements earns appellant a right to the right-of-way. No rights vest in the applicant until the grant is approved by the Secretary. An application for a right-of-way is properly rejected where the land is in an interim conveyance to a Native Corporation.

"Public lands." Land within an interim conveyance to a Native Corporation is no longer "public land" under the Federal Land Policy and Management Act nor subject to Bureau of Land Management jurisdiction to issue rights-of-way under that Act.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

Where, in connection with a communication site right-of-way, BLM requests an applicant to submit copies of FCC licenses and such applicant indicates a willingness to comply, the case is properly remanded for further processing.

Donald B. Clark, 44 IBLA 130 (Nov. 27, 1979)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

The grant of a right-of-way over Federal land for a pipeline or other linear project is a Federal undertaking which requires the authorizing agency to comply with sec. 106 of the National Historic Preservation Act, as implemented by 36 CFR Part 800.

The Extent to Which the National Historic Preservation Act Requires Cultural Resources to be Identified and Considered in the Grant of a Federal Right-of-Way, M-36917 (Dec. 6, 1979) 87 I.D. 27 (1980)

ACT OF MARCH 3, 1875

The Secretary of the Interior does not have authority under the Right-of-Way Oil and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 *et seq*. (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the mineral estate was included within the grant to the patentee.

Amerada Hess Corp., 24 IBLA 360 (Apr. 27, 1976) 83 I.D. 194

ACT OF MARCH 3, 1891

The Department of the Interior may condition approval of right-of-way applications filed pursuant to the Act of Mar. 3, 1891, by requiring acceptance of conditions for the protection of the public interest so long as such conditions are neither inconsistent with nor tend to unreasonably burden the proposed right-of-way projects.

Grindstone Butte Project, 24 IBLA 49 (Feb. 23, 1976)

The grantee of a right-of-way for irrigation or drainage purposes may not fence the right-of-way unless it is necessary to protect the grantee's use. Where the necessity of protecting an irrigation reservoir from incursion by cattle did not appear on the record, and the fence was not so located as to serve that purpose, fencing the reservoir constituted a trespass.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

ACT OF JANUARY 21, 1895

A decision by the Bureau of Land Management rejecting a logging road right-of-way application as not in the public interest will be affirmed in the absence of sufficient reasons to the contrary.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976) 83 I.D. 518

Although a right-of-way granted under the Act of Jan. 21, 1895, was previously subject to cancellation by the authorized officer for non-use pursuant to 43 CFR 2802.2-3, the Federal Land Policy and Management Act of 1976 provides that suspension or termination of a right-of-way requires an appropriate administrative proceeding pursuant to 5 U.S.C. § 554 (1970), except where the right-of-way provides by its terms that it will terminate in such event.

RIGHTS-OF-WAY--Continued

ACT OF JANUARY 21, 1895--Continued

A right-of-way issued pursuant to the Act of Jan. 21, 1895, gives the holder thereof an exclusive right of user.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

ACT OF FEBRUARY 15, 1901

It is not necessary to reject an application filed pursuant to the Act of Feb. 15, 1901, for a right-of-way in an area adjacent to but outside of the boundaries of an area designated as a potential addition to the Wild and Scenic Rivers System, unless it is determined that the project would invade the area or diminish the scenic, recreational, and fish and wildlife values present within the potential wild, scenic, or recreational river area, or there are other justifiable grounds for rejection.

Van Bistmann, 25 IBLA 171 (June 14, 1976)

A decision of the Bureau of Land Management, made in the exercise of its discretion, to reject a right-of-way application pursuant to the Act of Feb. 15, 1901, will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

Jack M. Vaughan, Judith L. Vaughan, 25 IBLA 301 (June 28, 1976)

A right-of-way granted pursuant to the Act of Feb. 15, 1901, may, in the discretion of the Secretary of the Interior, be canceled for either abandonment or nonuse; the holder of the right-of-way may be required to restore the area.

H. L. Townsend, 26 IBLA 175 (Aug. 6, 1976)

Under 43 CFR 2802.1-7(e), which provides that charges for a right-of-way on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Paradise Oil, Water and Land Development, Inc., 26 IBLA 374 (Sept. 8, 1976)

A right-of-way issued pursuant to the Act of Feb. 15, 1901, for the construction, maintenance, and operation of a water tank site, water pipeline, and an access road is properly canceled where the permittee has not completed construction within 5 years from the date of the grant.

Neil J. Cummins, 32 IBLA 384 (Nov. 3, 1977)

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. §§ 1761-1771 (West Supp. 1977).

Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a domestic water pipeline right-of-way will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

Stanley S. Leach, Roxanna M. Leach, 35 IBLA 53 (May 9, 1978)

The Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), was repealed by sec. 706 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2793, and any use or occupancy of public land granted subsequent to the effective date of FLPMA, Oct. 21, 1976, must be issued under authority of that Act. In authorizing the Secretary to grant rights-of-way, FLPMA provides that the Secretary shall require the applicant to submit certain information relating to the right-of-way, and a State Office notice enumerating such requirements is consistent with FLPMA.

William J. Colman, 40 IBLA 180 (Apr. 3, 1979)

Pending applications for rights-of-way filed under the Acts of Feb. 15, 1901, and Mar. 4, 1911, shall be considered as applications under the Federal Land Policy and Management Act of 1976.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

ACT OF MARCH 4, 1911

Under 43 CFR 2802.1-7(e), which provides that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Following a hearing under 43 CFR 2802.1-7, a decision increasing the charges for use and occupancy of a communication site is in error to the extent that the decision is based upon unspecified evidence not in the record and not made known to the user, and the decision must be set aside.

Under 602 DM 1.3, standards for evaluating easements granted by the Department are set forth in Interagency Land Acquisition Conference, *Uniform Appraisal Standards for Federal Land Acquisitions*.

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is a proper method of determining the fair market value of such site where there is sufficient comparable data available.

Under 43 CFR 2802.1-7(e), a revision of charges for use and occupancy of a microwave communication site should be based upon the physical condition of the right-of-way at the time the user properly commenced occupancy of the site or at time of grant thereof, whichever was

earlier, with value adjusted to present value in that condition.

"Highest and best use." As to the improver of a communication site during the term of his grant, a determination that the highest and best use of property is for communications purposes must be based on evidence showing it is so reasonably likely the site would be chosen for use as a communication site in the absence of improvements made by the improver that the suitability of the land for communications purposes would affect its general market value.

"Before and after rule." In reappraisal of a communication site, the before and after rule is applied by determining the market value of the Government tract including the site at the time of reappraisal, excluding any enhancement to or diminution from the site project, and subtracting therefrom the market value of the remaining Government property interest, including enhancement or diminution from the project.

In the absence of better evidence of comparable leases, the "before and after" method should be employed in appraisals of communication sites under 43 CFR 2802.1-7.

In a case where a substantial increase is proposed in charges for a communication site under 43 CFR 2802.1-7(e), the required hearing should be conducted in accordance with the accepted concepts of due process.

American Telephone and Telegraph Co., et al., 25 IBLA 341 (June 30, 1976)

Under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7(e), an applicant has no right to a hearing in connection with original charges for use and occupancy of a communication site, and a hearing pursuant to a request under 43 CFR 4.415 will not be granted where applicant fails to make specific allegations or offer specific proof to show in what factors a Departmental appraisal is in error.

Without convincing evidence that charges prescribed under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7 for use and occupancy of a communication site are excessive, charges properly prescribed by an authorized officer will be sustained on appeal.

Departmental regulation 43 CFR 2802.1-7 contemplates that a charge will be initially established for the entire term of the grant of a communication site right-of-way.

Mountain States Telephone and Telegraph Co., 26 IBLA 393 (Sept. 16, 1976) 83 I.D. 332

A right-of-way for a communication site for which application was made under the Act of Mar. 4, 1911, shall conform to the provisions of the Federal Land Policy and Management Act of 1976, sec. 510, 90 Stat. 2743, 2782, when application for grant was pending on Oct. 21, 1976.

Where the current fair rental value of a right-of-way has been determined in accordance with accepted appraisal procedures, and the permittee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Four States Television, Inc., 32 IBLA 205 (Sept. 19, 1977)

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911--Continued

Under 43 CFR 2802.1-7(e), the charge for a right-of-way on public lands may be revised upon compliance with procedural requirements at any time 5 years or more from the date when the rate was initially established.

XYZ Television, Inc., 32 IBLA 317 (Sept. 30, 1977)

Where there are multiple users on the same communications site each user is individually responsible for the fair market rental value computed as of the time of the initiation of use, and such rental value determined for the site may not be prorated among different users.

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decisionmaker, that the decisionmaker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

Where there are multiple users on the same communication site each user is individually responsible for the fair market rental value of his authorized use.

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decisionmaker, that the decisionmaker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Donald R. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

Pending applications for rights-of-way filed under the Acts of Feb. 15, 1901, and Mar. 4, 1911, shall be considered as applications under the Federal Land Policy and Management Act of 1976.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

ACT OF FEBRUARY 25, 1920

Where an appraisal has followed established criteria in calculating the fair market value of rental for a right-of-way, it will be affirmed, absent a showing by positive and substantial evidence that the appraisal is in error.

Western Slope Gas Co., 21 IBLA 119 (July 14, 1975)

APPLICATIONS

Where an appraisal has followed established criteria in calculating the fair market value of rental for a right-of-way, it will be affirmed, absent a showing by positive and substantial evidence that the appraisal is in error.

Western Slope Gas Co., 21 IBLA 119 (July 14, 1975)

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

A Bureau of Land Management decision rejecting an application under the Act of Feb. 15, 1901, for a domestic water pipeline right-of-way will be sustained where it was made in due regard for the public interest.

Hazel E. Kincaid, 25 IBLA 257 (June 23, 1976)

A decision of the Bureau of Land Management, made in the exercise of its discretion, to reject a right-of-way application pursuant to the Act of Feb. 15, 1901, will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

Jack M. Vaughan, Judith L. Vaughan, 25 IBLA 303 (June 28, 1976)

The Act of July 26, 1866, R.S. 2477, 43 U.S.C. § 932 (1970), grants a right-of-way for the construction of highways over public lands not reserved for public uses. Where the Bureau of Land Management closes a 400-foot haul road, formerly part of a right-of-way issued to the Oregon State Highway Department on Oregon and California revested land for a material site, without considering the implications of the statute, and appellant submits evidence showing that the road has been used by the public for many years, the decision will be set aside and the case will be remanded for a determination of whether a highway has already been established under the statute or, if not, to afford appellant an opportunity to file an application for a right-of-way under 43 CFR 2822.1-2.

Homer D. Meeds, 26 IBLA 281 (Aug. 26, 1976) 83 I.D. 315

A decision by the Bureau of Land Management rejecting a logging road right-of-way application as not in the public interest will be affirmed in the absence of sufficient reasons to the contrary.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976) 83 I.D. 518

Under existing regulations, no amended right-of-way application need be filed in connection with a change in the broadcast frequency of a microwave communications station where such change does not require any deviation from the location of a prior subsisting right-of-way grant.

American Telephone and Telegraph Co., 32 IBLA 336 (Oct. 18, 1977)

When considering an application for determination of right-of-way privileges, the Department of the Interior has no power to determine questions of control and appropriation of water rights between private parties which is a matter of State law. An application for a water pipeline right-of-way will not be approved where the applicant has no existing right to the water which he proposes to convey.

Executive Order No. 107 of Apr. 17, 1926, withdrew from appropriation all waterholes on public lands, and a purported right to appropriate water from the spring that postdates the withdrawal is without effect.

Pursuant to the Act of Feb. 15, 1901, repealed by sec. 706(a) of the Act of Oct. 21, 1976 (90 Stat. 2743, 2793), the Department had discretionary authority to permit the use of a right-of-way across public lands

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

to supply water for domestic purposes; however, a right-of-way application for such use was properly rejected where approval of the grant would be contrary to the public interest.

Broken H. Ranch Co., 33 IBLA 386 (Jan. 26, 1978)

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. §§ 1761-1771 (West Supp. 1977). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a domestic water pipeline right-of-way will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

It is appropriate for the Bureau of Land Management to reject a right-of-way application for a pipeline to convey water from a spring on public lands to private lands where it has determined that the overall effect of granting similar applications in a given area would be adverse to the public interest and allowance of one application might establish a precedent contrary to the public interest.

Stanley S. Leach, Roxanna M. Leach, 35 IBLA 53 (May 9, 1978)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as filed under the Federal Land Policy and Management Act of 1976.

Arnold E. Hedell, 37 IBLA 22 (Sept. 12, 1978)

Applications for rights-of-way for oil and gas pipelines, or amendments thereto which were pending at the time of the passage of the Trans-Alaska Pipeline Authorization Act of Nov. 16, 1973, 87 Stat. 579, amending sec. 28 of the Mineral Leasing Act, 30 U.S.C. § 185 (1976), may only be granted pursuant to the provisions of that Act.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. An application for a right-of-way pursuant to 43 CFR 2802.1-1 which does not comply with the clear and unequivocal requirements of the regulation must be rejected.

Personnel of BLM are not required to alter, modify, or correct an application for a right-of-way in order to conform such application to the requirements of the regulation under which it was filed.

Beehive Telephone Co., Inc., 38 IBLA 80 (Nov. 9, 1978)

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

Given the specific facts presented by the right-of-way application, where the use of a large percentage (71% - 89%) of the reservoir water is not known, the Secretary cannot make an "informed decision" on the application, as required by Title V of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743 (Oct. 21, 1976), 43 U.S.C. § 1761 et seq. (1976) (FLPMA), and therefore may not proceed to consider the application.

The apparent discretion granted to the Secretary in sec. 1761 of FLPMA which states that the Secretary shall require such information "which he deems necessary" to grant a right-of-way must be interpreted in light of sec. 1764's specific mandate to submit a plan of operation, sec. 1765's specific mandate to include protective terms and conditions, and Congress reference to "the use, or intended use" of the right-of-way. Therefore, information about the intended use--as opposed to possible uses--of the water is necessary to the Secretary's decision whether to grant the application, under the circumstances presented by this case.

The Secretary could establish general policy in right-of-way regulations which would provide specific guidelines for determining how much uncertainty about use will prevent the processing of right-of-way applications.

Federal Land Policy and Management Act's Effect on the Right-of-Way Application for the Middle Fork Reservoir on the Powder River, Wyoming, M-36900 (Jan. 12, 1979) 86 I.D. 293

Under the Federal Land Policy and Management Act of 1976, approval for a right-of-way for a timber access road is discretionary. A decision by BLM rejecting such an application will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Lowell Durham, 40 IBLA 209 (Apr. 10, 1979)

Pending applications for rights-of-way filed under the Acts of Feb. 15, 1901, and Mar. 4, 1911, shall be considered as applications under the Federal Land Policy and Management Act of 1976.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

CANCELLATION

Sec. 108 of Title 23, United States Code, does not require a State to file with the Department of the Interior proof of construction or utilization of a material site right-of-way issued pursuant to the Federal Aid Highway Act.

The "Secretary" referred to in that section is the Secretary of Transportation, and administration of that provision is a function of the Department of Transportation. Therefore, an apparent failure of compliance by the State does not mandate summary cancellation of the right-of-way by the Department of the Interior.

The Bureau of Land Management in granting a material site right-of-way pursuant to 23 U.S.C. § 317 (1970), may impose special terms and conditions which are not incompatible with the Act or the public interest, and a failure on the part of the grantee to comply will make the right-of-way subject to cancellation.

Where a regulation recites that a right-of-way "shall be subject to cancellation" for violation of its terms and conditions, the authorized officer is invested with

RIGHTS-OF-WAY--Continued

CANCELLATION--Continued

the discretion to cancel or not, depending upon the circumstances.

State of Alaska, Department of Highways, 20 IBLA 261 (May 19, 1975) 82 I.D. 242

A right-of-way granted pursuant to the Act of Feb. 15, 1901, may, in the discretion of the Secretary of the Interior, be canceled for either abandonment or nonuse; the holder of the right-of-way may be required to restore the area.

H. L. Townsend, 26 IBLA 175 (Aug. 6, 1976)

A right-of-way issued pursuant to the Act of Feb. 15, 1901, for the construction, maintenance, and operation of a water tank site, water pipeline, and access road is properly canceled where the permittee has not completed construction within 5 years from the date of the grant.

Neil J. Cummins, 32 IBLA 384 (Nov. 3, 1977)

Although a right-of-way granted under the Act of Jan. 21, 1895, was previously subject to cancellation by the authorized officer for non-use pursuant to 43 CFR 2802.2-3, the Federal Land Policy and Management Act of 1976 provides that suspension or termination of a right-of-way requires an appropriate administrative proceeding pursuant to 5 U.S.C. § 554 (1970), except where the right-of-way provides by its terms that it will terminate in such event.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

CONDITIONS AND LIMITATIONS

The Bureau of Land Management in granting a material site right-of-way pursuant to 23 U.S.C. § 317 (1970), may impose special terms and conditions which are not incompatible with the Act or the public interest, and a failure on the part of the grantee to comply will make the right-of-way subject to cancellation.

State of Alaska, Department of Highways, 20 IBLA 261 (May 19, 1975) 82 I.D. 242

The Department of the Interior may condition approval of right-of-way applications filed pursuant to the Act of Mar. 3, 1891, by requiring acceptance of conditions for the protection of the public interest so long as such conditions are neither inconsistent with nor tend to unreasonably burden the proposed right-of-way projects.

Grindstone Butte Project, 24 IBLA 49 (Feb. 23, 1976)

The Secretary could establish general policy in right-of-way regulations which would provide specific guidelines for determining how much uncertainty about use will prevent the processing of right-of-way applications.

Federal Land Policy and Management Act's Effect on the Right-of-Way Application for the Middle Fork Reservoir on the Powder River, Wyoming, M-36900 (Jan. 12, 1979) 86 I.D. 293

RIGHTS-OF-WAY--Continued

CONDITIONS AND LIMITATIONS--Continued

The grant of a right-of-way to cross Federal land for a proposed pipeline which is neither Federally authorized nor funded is an "undertaking" within the meaning of the National Historic Preservation Act, *as amended*, 80 Stat. 915, 16 U.S.C. § 470 *et seq.* (1976). However, construction of segments of the pipeline which do not cross Federal land, and which are neither Federally licensed nor funded, is not an "undertaking" under that Act, and the provisions of that Act do not apply to such segments.

The Department of the Interior may condition approval of a right-of-way application for the construction of a gas pipeline by requiring acceptance of conditions for the protection of the public interest so long as such conditions are neither inconsistent with nor tend to unreasonably burden the proposed right-of-way.

Western Slope Gas Co., 40 IBLA 280 (Apr. 18, 1979)

Sec. 106 of the National Historic Preservation Act requires an agency granting a right-of-way over Federal lands for a pipeline or other linear project to (1) identify potentially affected cultural resources; (2) consult regarding such effect with the Advisory Council on Historic Preservation; and (3) to consider these cultural resources in making or denying the grant. A rule of reason applies as to the scope of the lands to be inventoried, and the degree of effort required.

The grant of a right-of-way over Federal land for a pipeline or other linear project is a Federal undertaking which requires the authorizing agency to comply with sec. 106 of the National Historic Preservation Act, as implemented by 36 CFR Part 800.

Sec. 106 of the National Historic Preservation Act requires an agency granting a right-of-way over Federal lands for a pipeline or other linear project to identify and consider cultural resources on non-Federal lands affected by construction activities on Federal lands.

Sec. 106 of the National Historic Preservation Act requires an agency granting a right-of-way over Federal lands for a pipeline or other linear project to identify and consider cultural resources on non-Federal lands which may foreseeably be affected by the grant of the right-of-way. A rule of reason applies in determining the extent of non-Federal lands on which cultural resources are to be identified, and the degree of effort required. 36 CFR 800.4(a).

In the grant of a right-of-way over Federal lands for a pipeline or other linear project, the scope of lands to which the requirements of sec. 106 of the National Historic Preservation Act apply may be analogous to the scope of lands to be considered pursuant to sec. 102 of the National Environmental Policy Act.

The Extent to Which the National Historic Preservation Act Requires Cultural Resources to be Identified and Considered in the Grant of a Federal Right-of-Way, M-36917 (Dec. 6, 1979) 87 I.D. 27 (1980)

FEDERAL HIGHWAY ACT

Sec. 108 of Title 23, United States Code, does not require a State to file with the Department of the Interior proof of construction or utilization of a material site right-of-way issued pursuant to the Federal Aid Highway Act.

The "Secretary" referred to in that section is the Secretary of Transportation, and administration of that

RIGHTS-OF-WAY--Continued

FEDERAL HIGHWAY ACT--Continued

provision is a function of the Department of Transportation. Therefore, an apparent failure of compliance by the State does not mandate summary cancellation of the right-of-way by the Department of the Interior.

The Bureau of Land Management in granting a material site right-of-way pursuant to 23 U.S.C. § 317 (1970), may impose special terms and conditions which are not incompatible with the Act or the public interest, and a failure on the part of the grantee to comply will make the right-of-way subject to cancellation.

State of Alaska, Department of Highways, 20 IBLA 261 (May 19, 1975) 82 I.D. 242

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

A right-of-way for a communication site for which application was made under the Act of Mar. 4, 1911, shall conform to the provisions of the Federal Land Policy and Management Act of 1976, sec. 510, 90 Stat. 2743, 2782, when application for grant was pending on Oct. 21, 1976.

Where the current fair rental value of a right-of-way has been determined in accordance with accepted appraisal procedures, and the permittee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Four States Television, Inc., 32 IBLA 205 (Sept. 19, 1977)

Sec. 503 of the Federal Land Policy and Management Act of 1976 gives the Secretary discretionary authority with respect to issuance of rights-of-way. It would not be in public interest to grant appellant right-of-way because of inadequate water flow in Shoshone River and because of potential interference with planning for a modification of Buffalo Bill Dam. A decision by BLM, made in exercise of its discretion, to reject a water pipeline right-of-way application will be affirmed when the record shows the decision to be a reasoned analysis of factors involved made in due regard for public interest, and no sufficient reason to disturb decision is shown.

Broken H Ranch Co., 34 IBLA 182 (Mar. 21, 1978)

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. §§ 1761-1771 (West Supp. 1977). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a domestic water pipeline right-of-way will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

Stanley S. Leach, Roxanna M. Leach, 35 IBLA 53 (May 9, 1978)

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

Given the specific facts presented by the right-of-way application, where the use of a large percentage (71% - 89%) of the reservoir water is not known, the Secretary cannot make an "informed decision" on the application, as required by Title V of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743 (Oct. 21, 1976), 43 U.S.C. § 1761 *et seq.* (1976) (FLPMA), and therefore may not proceed to consider the application.

The apparent discretion granted to the Secretary in sec. 1761 of FLPMA which states that the Secretary shall require such information "which he deems necessary" to grant a right-of-way must be interpreted in light of sec. 1764's specific mandate to submit a plan of operation, sec. 1765's specific mandate to include protective terms and conditions, and Congress' reference to "the use, or intended use" of the right-of-way. Therefore, information about the intended use--as opposed to possible uses--of the water is necessary to the Secretary's decision whether to grant the application, under the circumstances presented by this case.

Federal Land Policy and Management Act's Effect on the Right-of-Way Application for the Middle Fork Reservoir on the Powder River, Wyoming, M-36900 (Jan. 12, 1979) 86 I.D. 293

Under the Federal Land Policy and Management Act of 1976, approval for a right-of-way for a timber access road is discretionary. A decision by BLM rejecting such an application will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Lowell Durham, 40 IBLA 209 (Apr. 10, 1979)

Pending applications for rights-of-way filed under the Acts of Feb. 15, 1901, and Mar. 4, 1911, shall be considered as applications under the Federal Land Policy and Management Act of 1976.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

NATURE OF INTEREST GRANTED

Although the grants of a right-of-way to a railroad under sec. 2 of the Act of July 1, 1862, and of title to odd-numbered sections of land under sec. 3 of that Act were grants *in praesenti*, the railroad's interest in the right-of-way land stems solely from sec. 2. There is no difference in its interest in portions of the right-of-way land which cross even-numbered sections of land and in portions which cross odd-numbered sections. Minerals underlying the right-of-way were reserved to the United States in both instances.

Title to the oil and gas deposits underlying the right-of-way granted to a railroad by the Act of July 1, 1862, 12 Stat. 489, did not pass under a patent to the land that the right-of-way crosses. Rather, title remains in the United States.

Brown W. Cannon, Jr., et al., 24 IBLA 166 (Mar. 16, 1976) 83 I.D. 80

The Secretary of the Interior does not have authority under the Right-of-Way and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 *et seq.* (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the

RIGHTS-OF-WAY--Continued

NATURE OF INTEREST GRANTED--Continued

mineral estate was included within the grant to the patentee.

Amerada Hess Corp., 24 IBLA 360 (Apr. 27, 1976)
83 I.D. 194

The grantee of a right-of-way for irrigation or drainage purposes may not fence the right-of-way unless it is necessary to protect the grantee's use. Where the necessity of protecting an irrigation reservoir from incursion by cattle did not appear on the record, and the fence was not so located as to serve that purpose, fencing the reservoir constituted a trespass.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

A right-of-way issued pursuant to the Act of Jan. 21, 1895, gives the holder thereof an exclusive right of user.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

RULE OF APPROXIMATION

The special rule of approximation for geothermal lease offers is applied by subtracting from the total acreage of the offer the acreage of the irregular subdivision which caused the excess acreage. Where a geothermal lease offer describes four complete sections and the area embraced in the application exceeds the acreage limit because one or more of the sections is irregular, the offer may be considered if deletion of the irregular section (or one of them if there is more than one) would cause an acreage deficiency (acreage limit less acreage described in the offer) greater than the excess acreage resulting from inclusion of the section.

Nelson B. Hunt, 27 IBLA 365 (Nov. 8, 1976)

RULES OF PRACTICE

(See also Appeals, Contests and Protests, Contracts, Federal Coal Mine Health and Safety Act of 1969, Hearings, Indian Probate, Practice Before the Department--if included in this Index.)

GENERALLY

Where the party bearing the risk of nonpersuasion does not appear at a hearing ordered pursuant to 43 CFR 4.415, that party's appeal is properly dismissed.

Stanley G. West, 18 IBLA 337 (Jan. 10, 1975)

A Bureau of Land Management State Office may reconsider one of its decisions prior to the filing of an appeal in the case, but the filing of an appeal terminates that authority.

John J. Sexton (On Reconsideration), 20 IBLA 187 (May 7, 1975)

RULES OF PRACTICE--Continued

GENERALLY--Continued

Where a lessee fails to pay the annual rental on or before the anniversary date, and where the lessee knew, or should have known, that the payment was due, estoppel will not operate to relieve the lessee of the consequent automatic termination of the lease.

The Polumbus Corp., 22 IBLA 270 (Oct. 30, 1975)

A stipulation as to procedure only involving two appeals arising under the same contract is disregarded where following the submission of simultaneous briefs under a cross motions for summary judgment procedure, the Board finds some of the terms of the stipulation in which it had acquiesced to be at variance with the rule in the Court of Claims against the splitting of the cause of action under a single and indivisible contract and that adherence to the stipulation could be prejudicial to the contractor in certain foreseeable circumstances. The stay of proceedings provided for by the stipulation with respect to one appeal is therefore vacated and as a corollary to such action the appellant is directed to file its complaint.

Finding that it has inherent discretion to order consolidation of appeals in appropriate cases, the Board orders the consolidation of two appeals which the appellant has asserted involve common questions of law and fact and which, in any event, arose under the same contract, involve the same attorneys and, presumably, the same witnesses.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA-1072-7-75 (Apr. 7, 1976)
83 I.D. 148

Where it appears that the Bureau of Land Management determined the status of land without considering the effect of conflicting surveys and maps, and where there is insufficient data in the case file for this Board to resolve the conflicts the decision will be remanded to the Bureau for reconsideration in light of those conflicts.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

Service of a document upon a person's attorney of record constitutes effective service upon such person.

United States v. Nine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

A document which is sent by the Bureau of Land Management to an oil and gas lessee by certified mail is considered to be served upon the lessee when a receptionist in lessee's office signs the return receipt card, and the lessee will be charged with notice as of that date as to the contents of such document.

Lone Star Producing Co., 28 IBLA 132 (Nov. 19, 1976)

RULES OF PRACTICE--Continued

GENERALLY--Continued

The fact that the contest regulations may not contain a specific provision providing for the assertion of affirmative defenses or counterclaims in an answer to a contest complaint does not necessarily bar an administrative law judge from consideration of the substance of such assertions.

United States v. Jerry L. Crow, 28 IBLA 345 (Jan. 24, 1977)

A mining claim is properly declared null and void where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

United States v. Chester L. Ramsey, 29 IBLA 243 (Mar. 25, 1977)

A Bureau of Land Management decision, dismissing an answer to contest complaints filed in behalf of individual contestees and a company, and holding mining claims null and void because it appeared the company did not own the claims and because the answer was filed in behalf of the individual contestees by someone not authorized to practice in their behalf, will be vacated where on appeal it is shown that within the time for filing the answer the claims had been transferred to the company. There is no need to dismiss the contest and initiate a new contest against the company since a timely answer has been filed in its behalf; instead, the complaints should be amended to substitute the company as the contestee and party in interest and the contest proceeding should go forward against it.

Sharon K. Milazzo et al., 33 IBLA 57 (Dec. 5, 1977)

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

Service by registered or certified mail may be proved by a Post Office return receipt showing that the document was delivered to the person's record address. The receipt need not be signed necessarily by the person to whom the mail was addressed.

Lillian Sweet, 37 IBLA 25 (Sept. 14, 1978)

The use of a post office box number as an address is not barred by the oil and gas leasing regulations governing applications or by the Rules of Practice of the Department.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

RULES OF PRACTICE--Continued

GENERALLY--Continued

While an appeal of one decision of the BLM is pending before the Board, the BLM is without authority to exercise jurisdiction in the matter which is the subject of the appeal. Where the BLM exercises jurisdiction and the subsequent decision presents the same issue as the first, and the parties are given an adequate opportunity at the hearing and on appeal to present evidence and argue as to this issue, the Board will proceed to consider both decisions on their merits.

California Ass'n of Four-Wheel Drive Clubs et al., 38 IBLA 361 (Dec. 29, 1978)

The right to administrative relief is a privilege afforded by law to persons who consider themselves interested or aggrieved. The burden is upon the interested person to act affirmatively to protect perceived interests. Such a person is not entitled to wait until all other interested persons act, to speculate on the outcome, and then, if the decision is adverse, to seek to reopen the matter on his or her own behalf, when that person has been afforded notice of all the proceedings.

Western Slope Gas Co. (On Reconsideration), 43 IBLA 259 (Oct. 15, 1979)

Service of a BLM decision may be made by sending the document by registered or certified mail, return receipt requested, to an applicant's address of record in the Bureau, and it is irrelevant who there actually receives and signs for it.

Martha P. Merrill, 44 IBLA 136 (Nov. 30, 1979)

APPEALS

Generally

The doctrine of administrative finality, the administrative counterpart of res judicata, ordinarily bars reopening the issue of a permittee's class 1 base property qualifications resolved in a prior Departmental decision, but will not prevent modification of a decision to correct a conclusion inconsistent with the legal ruling of the case and apparently the result of an oversight as to the basis of the factual finding upon which it relies.

J. J. Cowgill et al., 19 IBLA 274 (Apr. 7, 1975)

An appeal filed for an appellant by an attorney-in-fact who is not himself qualified to practice before the Department under 43 CFR 1.3 is subject to summary dismissal.

Haruyuki Yamane et al., 19 IBLA 320 (Apr. 7, 1975)

Where an appeal has been taken and a final Departmental decision has been reached, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Where a desert land applicant appeals from a decision of the BLM holding his application incomplete and, therefore, without priority of filing as against subsequent applications, which were allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piecemeal adjudication.

Michael E. Heaney, 21 IBLA 339 (Aug. 18, 1975)

Nelda E. McAndrew, 24 IBLA 205 (Mar. 22, 1976)

Decisions rendered by officers of the Bureau of Land Management should contain relevant appeal information except in those situations in which it is clear that no appeal lies.

L. O. Power et al., 22 IBLA 15 (Sept. 5, 1975)

When the issues presented on appeal are moot the appeal will be dismissed.

Duncan Miller, 22 IBLA 52 (Sept. 17, 1975)

A petition for revocation of a withdrawal must be denied where the holding agency does not consent, and Bureau of Land Management should inform the applicant that further correspondence relative to his petition should be addressed to the holding agency.

Robert D. Hughes, 22 IBLA 121 (Sept. 26, 1975)

On appeal from decision(s) rejecting oil and gas lease offer(s) insofar as they include land(s) within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the land(s) under a no-surface-occupancy stipulation, and the offeror(s) indicate they would accept such a stipulation for all the land(s) at issue, the decision(s) will be set aside and the case(s) remanded for consideration of issuance of lease(s) containing no-surface-occupancy stipulation(s) on the land(s) in the lava flow.

Houston Oil and Minerals Corp., Leland A. Hodges (Trustee), 22 IBLA 172 (Sept. 30, 1975)

Leland A. Hodges (Trustee), 23 IBLA 142 (Dec. 23, 1975)

An appeal to the Director, Geological Survey, is properly dismissed by him where the appellant failed to comply with the procedure prescribed by the applicable regulations with respect to the form and content of the notice of appeal, the time afforded for the filing of additional reasons, arguments or briefs, and the procedure for obtaining an extension of such time, and no valid reason is given which would warrant excusing such failures as an exercise of administrative discretion.

Robert B. Ferguson, 23 IBLA 29 (Dec. 2, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from a rejection of a Native allotment application in the absence of a satisfactory showing why the evidence was not submitted to Bureau of Land Management within the period afforded the applicant for the submission of such evidence.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

Where a contract for the construction of a powerline contained two rates for the erection of tower steel and the contractor, contending that the contract was ambiguous (which was admitted by the Government in part), claimed additional compensation at the higher helicopter erection rate and filed a request for the production of documents in nine separate categories which request was opposed by the Government principally upon the ground that the documents were irrelevant to any issue in the appeal, the Board, following the rule that it is not a valid objection that information sought in discovery proceedings may not be admissible at the hearing if the request appears reasonably calculated to lead to the discovery of admissible evidence, grants appellant's request in principal part.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (Dec. 18, 1975) 82 I.D. 625

Where the record of a Native allotment application at the time of adjudication shows that rejection would be proper, appellant will not be allowed on appeal to submit data which might warrant a different result, absent a clear and convincing showing explaining why the information was not afforded to the Bureau of Land Management when appellant was called upon for such data.

David E. Stevens, 23 IBLA 221 (Jan. 8, 1976)

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from rejection of a Native allotment satisfactory to it why the evidence was not submitted to the Bureau of Land Management within the 60-day period afforded the applicant to submit a further evidence in support of his application. General, rather than specific, allegations of difficulties in travel and communicating in Alaska are not satisfactory showings of the reason for late filing of such evidence.

Linda L. Walker, 23 IBLA 299 (Jan. 14, 1976)

The Board of Land Appeals may entertain and, where appropriate, grant a motion by the Bureau of Land Management to remand a case to it for further consideration on the question of whether an environmental impact statement must be filed, even though an appellant, who has protested against a negative declaration that no impact statement is required, objects to the remand.

Harold Gillis, 24 IBLA 208 (Mar. 25, 1976)

A district manager's failure to hold an Advisory Board meeting on a grazing applicant's protest is mooted by a subsequent regulatory amendment terminating graziers' rights to an Advisory Board meeting on protests. In any event, the case would not be remanded for such a

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

meeting when there is no prejudice because the applicant is foreclosed by the grazing regulation from the possibility prevailing on his protests.

Phil J. Hillberry, 24 IBLA 283 (Mar. 31, 1976)

A stipulation as to procedure only involving two appeals arising under the same contract is disregarded where following the submission of simultaneous briefs under a cross motions for summary judgment procedure, the Board finds some of the terms of the stipulation in which it had acquiesced to be at variance with the rule in the Court of Claims against the splitting of the cause of action under a single and indivisible contract and that adherence to the stipulation could be prejudicial to the contractor in certain foreseeable circumstances. The stay of proceedings provided for by the stipulation with respect to one appeal is therefore vacated and as a corollary to such action the appellant is directed to file its complaint.

Finding that it has inherent discretion to order consolidation of appeals in appropriate cases, the Board orders the consolidation of two appeals which the appellant has asserted involve common questions of law and fact and which, in any event, arose under the same contract, involve the same attorneys and, presumably, the same witnesses.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA-1072-7-75 (Apr. 7, 1976)
83 I.D. 148

Upon appeal from a decision of an administrative law judge, the Board of Land Appeals may make all findings of fact and conclusions of law based upon the record just as though it were making the decision in the first instance.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

Where an issue which gives rise to an appeal is mooted during the pendency of the appeal, the appeal will not be dismissed where the priority of the application is dependent upon the correctness of the original decision.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17, 1976)

Where a decision by an officer of the Department has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

Since the Bureau of Land Management has no authority to issue a public land order withdrawing land, such authority existing only in the Secretary, the Under Secretary and the Assistant Secretaries of the Department of the Interior, recommendations by officers of the Bureau of Land Management relating to withdrawals are not subject to review under the provisions of 43 CFR 4.450-2 or 43 CFR 4.410.

City of Kotzebue, 26 IBLA 264 (Aug. 20, 1976)
83 I.D. 315

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant is not sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a United States interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Jean Oakason, 27 IBLA 41 (Sept. 22, 1976)

While the Department of the Interior does not rigidly apply the doctrine of administrative finality so as to bar any subsequent reassertion of soldier's additional homestead scrip rights which have been determined to be invalid, it is incumbent upon an applicant seeking to exercise such rights to submit compelling legal or equitable reasons for reconsideration.

George Rodda, Jr., 27 IBLA 186 (Oct. 4, 1976)

An appeal to the Board of an automatic termination of an oil and gas lease will be dismissed as not ripe where appellant sends the appeal to the Board before a Notice of Termination of Lease has been issued and a Petition for Reinstatement rejected by the State Office, Bureau of Land Management.

Read & Stevens, Inc.; Franklin, Aston & Fair, Ltd.; and Colorado Interstate Gas Co., 29 IBLA 154 (Mar. 4, 1977)

A Bureau of Land Management decision extending the lease term of an oil and gas lease for 2 years following the termination of the unit agreement of which the lease was a part is premature, where the lessee has appealed the Geological Survey's determination of the effective date of termination of the unit agreement. The Bureau of Land Management decision will be set aside and the case remanded to await the final outcome of the lessee's appeal of the Geological Survey determination.

Tenneco Oil Co., 29 IBLA 157 (Mar. 7, 1977)

The thrust of 43 CFR 4.410, which limits the right to appeal to those who are parties to a case, is not to restrict access to administrative review of actions of Bureau of Land Management officials, but to provide a logical framework within which such review might be exercised. An "appeal" by an individual or group which has not, prior to the "appeal," participated in the formulation of the action to which objection is being voiced, should be treated as a protest under the provisions of 43 CFR 4.450-2.

California Ass'n of Four Wheel Drive Clubs et al., 30 IBLA 383 (June 10, 1977)

The Board of Land Appeals will entertain and grant a motion by the Bureau of Land Management to remand an oil and gas lease case on appeal to the Board from a decision holding the lease had terminated and denying a petition to reinstate the lease, where BLM discovered, while the case was on appeal, that its decision was predicated on an erroneous factual basis in that annual rental for the lease had actually been paid on time,

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

but the check had been misplaced by BLM and was later found.

Kathryn A. Dalton, 31 IBLA 1 (June 15, 1977)

Where a State swampland selection has been rejected on the ground that the land selected has been disposed of, but in fact that land was available to the State, the judgment is valid and binding until set aside. Since the Secretary has jurisdiction to determine whether the land selected is available, he has jurisdiction to decide erroneously. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land to a color of title applicant's predecessor, and an adverse right has intervened.

John Stuart Hunt, Sherman H. Hunt, 3. IBLA 304 (July 22, 1977) 84 I.D. 421

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision made in the exercise of that discretion must contain such a statement of reasons in support of the decision as will establish that the discretion has been exercised in a manner that is neither arbitrary nor capricious. Review on the issue of abuse of discretion is limited to an inquiry whether the statement of reasons establishes a rational and defensible basis for the decision below.

Andrew [illegible] L. Anderson et al., 32 IBLA 123 (Sept. 12, 1977)

When a right-of-way applicant fails to submit corrected maps and payment of charges within a reasonable time after notice, which notice does not prescribe a specific time therefor, but on appeal applicant explains the reasons for delay, a rejection of the application may be set aside and the case remanded.

Jerrold R. Cooley, Lucy M. Cooley, 32 IBLA 387 (Nov. 7, 1977)

Under 43 CFR 4.401(a), a notice of appeal to the Board of Land Appeals may be considered even if not filed within the 30-day appeal period, where it is filed within 10 days of the deadline date and is transmitted within the appeal period.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

The publication by the Director, Geological Survey, of a "Notice to Lessees" is not an action appealable to this Board under 30 CFR Part 290, where the "Notice" is a generalized instruction to subordinates of the Geological Survey, and the "Notice," itself, is not self-executing. Specific application of the "Notice" to a lessee is, however, a matter subject to appeal and review within the Board of Land Appeals.

Tenneco Oil Co., 36 IBLA 1 (June 27, 1978)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer was not proper and must be rejected, the applicant may not thereafter appeal the matter to this Board merely because the Bureau of Land Management, in implementing the Board's decision, mistakenly advised him that he had the right to such an appeal. The matter is res judicata, and the subsequent appeal must be dismissed.

Where the Board of Land Appeals, by a previous decision, has held that a particular oil and gas lease offer must be rejected, and the rejected applicant files suit for judicial review of that decision in the United States District Court, and also files a contemporaneous appeal to the Board from a BLM decision implementing the Board's decision, the Board will defer to the Court's jurisdiction and make no decision on the merits of the appeal, which is subject to summary dismissal by the Board.

Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

Where contestant in private homestead entry contest appeals to Board of Land Appeals and makes certain assignments of error by administrative law judge, but allegations of fact upon which those assignments are based were not corroborated at filing of contest complaint, and issues raised by those assignments were not raised in complaint, such assignments are not material for purposes of appeal to the Board.

Ernest C. Lamb v. Richard R. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that certain coal prospecting permits have terminated and that no preference right to a coal lease is attached to any of them, an unapproved assignee of the permits may not thereafter appeal the matter to this Board following Bureau of Land Management notification to the permittees of this Board's decision. The matter is res judicata and such subsequent appeal must be dismissed, absent compelling legal or equitable considerations.

Peabody Coal Co., 36 IBLA 242 (Aug. 14, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer may properly be rejected for the reason that title to the lands involved was uncertain, and a new lease offer for the same lands is again rejected for the same reason, the matter is res judicata, and the subsequent appeal is properly dismissed.

N. L. Industries, Inc., 37 IBLA 335 (Oct. 26, 1978)

The Board of Land Appeals will not exercise its de novo review authority to deny applications for Alaska grazing leases on the basis of trespass where (1) trespass was not cited as a reason for denial of the applications in the decision under appeal, (2) the record does not provide a clear basis for determining the applicant's responsibility for the trespass, and (3) there is no record of compliance with the procedures specified in 43 CFR 9239.0-9(b).

Kenneth R. Lynch, 37 IBLA 346 (Oct. 27, 1978)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

A request for an oral argument before the Board of Land Appeals may be denied when legal issues are well briefed and no useful purpose would be served.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978) 85 I.D. 403

An appeal from a decision denying a protest against the issuance of a patent must be dismissed if the patent has been issued, because the Department has no jurisdiction to act further in the matter.

Because issuance of a patent removes the land from Departmental jurisdiction, it is not proper to issue that patent simultaneously with dismissal of a protest against the patent application because such action deprives the protester of his right to review and precludes compliance with 43 U.S.C.A. § 1701(a)(5) (West Supp. 1978) which mandates objective administrative review of initial decisions.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

A mining claim contestee's allegation that BLM wrongly held a mining claim null and void ab initio will not be entertained where the contention is raised long after the time for appealing the decision has passed.

United States v. Jerry Prock et al., 39 IBLA 148 (Jan. 29, 1979)

A party adversely affected by a final order or decision of an officer of the Conservation Division of the Geological Survey has a right to appeal to the Director, Geological Survey, unless the decision was approved by the Secretary or Director prior to promulgation.

A party adversely affected by a final decision of the Director, Geological Survey, had a right of appeal to the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary.

Phoenix Resources Co., 39 IBLA 153 (Jan. 29, 1979)

Where Bureau of Land Management terminates a sodium lease because lessee failed to submit justification for holding a lease in excess of the acreage limitation, the decision will be set aside upon submission or explanation of failure to provide written information, and the case will be remanded for the State Office to determine whether the information submitted on appeal justifies continued lease tenure.

Olin Corp., 39 IBLA 161 (Jan. 29, 1979)

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Ralph and Ruth Dickinson, 39 IBLA 258 (Feb. 15, 1979)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Relitigation of the issue of discovery is barred by the principle of res judicata and its corollary, collateral estoppel, insofar as the same lands, parties, and claims are involved, absent compelling legal or equitable reasons for reconsideration.

Under principles of res judicata, a judgment is binding upon all parties to the proceedings in which it is rendered and to their privies. Privity denotes a mutual or successive relationship to the same right in property. Privity exists within the meaning of the doctrine of res judicata to bind a subsequent grantee, transferee, or lienor of property.

United States v. Leroy S. Johnson et al., 39 IBLA 337 (Feb. 28, 1979)

When a State Office rejects the offer of a first-drawn applicant in a drawing under the simultaneous oil and gas leasing program, an appeal by the applicant raises the issue of his qualifications to hold the lease. The qualifications of the second-drawn applicant are irrelevant until such time as the offer of the first-drawn applicant is rejected and all his avenues of appeal are exhausted. However, it is not improper for BLM to name the second-drawn applicant as an adverse party in a decision rejecting the first-drawn applicant.

Thomas E. Flickinger, William S. Flickinger, et al., 40 IBLA 53 (Mar. 16, 1979)

Where the holder of an oil and gas lease on the Outer Continental Shelf has filed a suit in a Federal district court to recover certain royalties paid under his lease, the Board of Land Appeals will affirm a decision of the Director, Geological Survey, holding in abeyance the lessee's request for a refund while the suit is pending.

Tenneco Oil Co., 41 IBLA 195 (June 22, 1979)

A decision by the Bureau of Land Management canceling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

Blue Star, Inc., Atomic Western, Inc., Fremont Energy Corp., Ivor Adair, 41 IBLA 333 (July 11, 1979)

The principle of res judicata does not operate to bar consideration of a new Alaska Native allotment application under 43 U.S.C. §§ 270-1 through 270-3 (1970), despite previous denial of a prior application, when the initial adjudication was confined to a single issue, which issue is irrelevant under a later interpretation of the statute.

Rika Murphy, Gene H. Seagge, 42 IBLA 51 (July 31, 1979)

Mailing to the Bureau of Indian Affairs a carbon copy of a decision rejecting an application for an Alaska Native allotment is not service upon the applicant so as to comply with 43 CFR 4.401.

Gust J. Heft, Sr., 42 IBLA 86 (Aug. 13, 1979)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

The relaxed procedural rules relating to the filing of statements of reasons for appeal in Native allotment cases enunciated in the letter of Sept. 24, 1975, and extended in the order of Nov. 26, 1976, IBLA 76-715, are hereby revoked. All future requests for extensions of time must comport with the regulations found at 43 CFR 4.22(f)(2).

Where, in a decision holding a Native allotment for approval and a State selection for rejection to the extent of a conflict, the Bureau of Land Management grants the State 30 days to initiate a private contest challenging the Native allotment, the 30-day appeal period will commence upon expiration of the 30 days accorded the State for initiation of a private contest and not with receipt of the decision.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest, or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska et al., 42 IBLA 94 (Aug. 16, 1979)

Where an appellant admits in correspondence with the Department that the decision of the Bureau of Land Management State Office holding his mining claim invalid is correct, the appeal may be dismissed.

Ernest V. Hiniker, 43 IBLA 153 (Sept. 28, 1979)

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

United States v. Elbert Gassaway, 43 IBLA 382 (Oct. 31, 1979)

The filing of a timely protest suspends the authority of the State Office to act upon the matter until the protest has been ruled upon. Further, action is to be additionally suspended after a ruling on the protest for the period of time in which a person adversely affected may file a notice of appeal therefrom.

Where, on appeal from the denial of a protest to the issuance of a right-of-way, an appellant does not show that issuance of the right-of-way was contrary to the law or applicable regulations, a decision rejecting the protest will be affirmed.

James W. Smith, 44 IBLA 275 (Dec. 26, 1979)

Answers

Motion for quantum hearing will be allowed when the Government admitted liability on certain claims in the Answer and the first hearing was limited to entitlement.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977)
84 I.D. 1019

RULES OF PRACTICE--Continued

APPEALS--Continued

Answers--Continued

The applicable regulation, 43 CFR 4.414 (1977), allows the Board some discretion in deciding whether to disregard the answer of an appellee who fails to file an answer within 30 days after service on him of the notice of appeal or statement of reasons and whose delay in filing is not waived under the provisions of 43 CFR 4.401(a) (1977).

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (May 10, 1979)

Burden of Proof

A determination by a district manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

John T. Murtha, 19 IBLA 97 (Mar. 4, 1975)

Kaser Brothers, 24 IBLA 265 (Mar. 29, 1976)

A party challenging a determination that lands are within a known geologic structure has the burden of making a clear and definite showing of error in the determination; material indicating that the geologic formation at issue is irregular in quality and productivity does not constitute a showing that the lands are not presumptively productive, *i.e.*, that the lands are not within the known or inferred limits of the multiple and overlapping producing intervals involved.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (Mar. 5, 1975)

The burden of proving that failure to pay advance rentals on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence is the obligation of the one who failed to make timely payment.

E. J. Harvey, Jr., 19 IBLA 230 (Mar. 25, 1975)

A protestant against the filing of a survey plat bears the burden of proof, *i.e.*, the risk of nonpersuasion, to show why the plat should not be accepted, and the applicant State has the burden of demonstrating that land is swamp and overflowed in character. The protestant against the filing of a survey plat who claims that title to the land passed to the State under the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), is properly assessed with the burden of proof, *i.e.*, the risk of nonpersuasion, in the proceeding.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

In a mining claim contest, the claimant is the proponent of the rule or order that he has complied with the provisions of the mining law, which have been brought into issue, and the Government bears the burden only of presenting a prima facie case of invalidity; the claimant must then preponderate on the issues litigated.

United States v. Ed Brandt, 21 IBLA 166 (July 22, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

To be able to support a claim for excess reprocurement costs, the Government must establish that work under a reprocurement contract has been performed and that payment has been made.

Appeal of Ballwebers Cleaning Service, IBCA-1057-1-75 (Oct. 2, 1975)

An oil and gas lease bidder appealing from the rejection of his tender on the basis of inadequacy of the bonus bid must show by substantial evidence either (1) the criteria utilized in establishing the minimum bid value failed to include all relevant considerations, or included factors that were not relevant; or (2) the criteria were incorrectly applied.

H & W Oil Co., Inc., 22 IBLA 313 (Nov. 10, 1975)

A claim for acceleration under a contract for the construction of footings for a transmission line is denied where one of appellant's principal contentions was that in a telephone conversation following record show in late September the project engineer had directed that men and equipment be added to the job in order to finish the work by the contract completion date of Nov. 1, but in correspondence conducted with the Government for almost 6 months after such telephone conversation the contractor failed to refer to the directions purportedly received from the project engineer and even failed to reference the particular telephone conversation. Actions taken by the Government's principal inspector were also found not to constitute acceleration orders when the evidence clearly showed that both parties viewed the inspector's action as involving suggestions rather than directions and that whether the suggestions were accepted by the contractor's job superintendent depended upon the exercise of his business judgment.

Appeal of Iversen Construction Co. (a/k/a Iconco), 82 I.D. 646
IBCA-981-1-73 (Dec. 30, 1975)

A claim for a longer time extension under a construction contract due to unusually severe weather is denied where the contracting officer obtained the local climatological data and after reviewing the data granted a time extension when appellant failed to dispute the data or offer any evidence to support its claim for a longer period.

Appeal of David M. Cox, Inc., IBCA-1079-10-75 (Apr. 7, 1976)

Under a contract requiring the use of grout the Board denies a contractor's claim where it finds the terms of the specifications dispositive of the question presented.

Appeal of Whalen & Co., IBCA-1066-3-75 (May 26, 1976)

A first category differing site conditions claim based on the encountering of subsurface waterlines not shown on the contract drawings in the vicinity of a fish hatchery building is denied, where the Board finds that except for the unsupported allegations of the contractor there is nothing in the record to indicate that the experienced subcontractor who performed required excavation in the area where the buried waterlines were located failed to anticipate the conditions he actually encountered.

Although a first category differing site conditions claim is established by the presence of a septic tank in an area where the plans indicate a sewage treatment plant was slated to go, a contractor's claim based thereon is denied where the evidence shows that the location of the sewage treatment plant was changed before any significant amount of work was done in the area where the septic tank was located.

Appeal of William Lagnion (Contractor), IBCA-1083-10-75 (Jan. 5, 1977)

While the burden of showing an excusable cause of delay to exist is on the construction contractor, the invoking of this rule presupposes that the Government will leave this responsibility with the contractor, or, if it undertakes to correspond directly with the subcontractors or suppliers concerning delays experienced, it will inform them of the criteria set forth in the contract for establishing an excusable cause of delay.

Appeal of The J. C. Hester Co., Inc., IBCA-1114-7-76 (Jan. 14, 1977)

A claim for extra work is denied where the appellant does not even undertake to show why the work was considered to be beyond the requirements of the contract.

Appeals of Willie H. Patterson, IBCA-1115-7-76, IBCA-1116-7-76, IBCA-1117-7-76 and IBCA-1118-7-76 (Oct. 28, 1977)

In prosecuting an appeal the burden of proof is upon appellant to establish by credible evidence that it is entitled to an equitable adjustment.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (Mar. 3, 1977)

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

Under a contract requiring contractor to provide all necessary material, equipment and labor, the contractor's admission that it did not have adequate equipment or an efficient work force, as well as a lack of experience in the work required to be performed does not meet the burden of proof to justify an extension of time.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

A mining claimant must prove a discovery under the prudent man test, including that the mineral can be extracted, removed and marketed at a profit.

United States v. Pittsburgh Pacific Co., 30 IBLA 388 (June 15, 1977) 84 I.D. 282

Claimant has the burden of proof of extra work and failed to establish that in placing utility lines the actual work performed differed from contractually required work.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

An appeal is dismissed as untimely when it was not filed within 30 days of the date on which the contracting officer's final decision was received by a person who was not employed by the appellant but who was authorized to receive his mail during the 6 weeks the appellant was away on vacation. While the appellant denied that such person was authorized to sign a return receipt for certified mail, the Board noted that no question of authority to sign for certified mail had been raised in the contractor's letter requesting an extension in the time for filing the appeal and that no such question was raised until the Government's motion to dismiss the instant appeal was filed.

Appeal of Harry Claterbos Co. JV, IBCA-1153-5-77 (Dec. 6, 1977) 84 I.D. 969

When the contract requires the pipe to be laid in a trench 18 inches in depth measured from the center line of the pipe to the top of the ground line or on top of the ground with 18 inches of cover if rock strata is encountered, the contractor cannot sustain an allegation of a constructive change when the Government insists the requirements be followed and objects to contractor laying the pipe in a trench less than 18 inches in depth.

Appeal of Underground Utility Services, IBCA-1047-11-74, IBCA-1089-11-75 (Dec. 28, 1977)

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

Where, on appeal, a grantee of a right-of-way makes a substantial showing of error in the revision of the rental rate for use of the right-of-way, and where the State Office has not had an opportunity to consider the grantee's arguments, a decision dismissing a protest to the revised rental rate will be set aside and the case will be remanded in order to afford the State Office an opportunity to review its appraisal in light of the grantee's contentions.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

On appeal, an assessment of damages made by BLM for timber trespass will not be disturbed where neither appellant's contentions nor the record prove that BLM determination was in error.

David Robinson, 36 IBLA 386 (Sept. 5, 1978)

In challenging the Government resurvey, appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

Applicant has burden of establishing entitlement to headquarters site claim, and must demonstrate that he has complied with statute and regulations.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

United States v. Henry Jay Bush, 40 IBLA 106 (Mar. 27, 1979)

Where arguably conflicting uses of the public lands are at issue and the matter has been committed to the discretion of the BLM, the Board will uphold the decision of the BLM resolving the conflict unless appellant has shown that the BLM did not adequately consider all of the factors involved, including whether less stringent alternatives would accomplish the intended purpose, or that there is sufficient reason to change the result.

California Ass'n of Four-Wheel Drive Clubs et al., 38 IBLA 361 (Dec. 29, 1978)

On appeal from a determination of United States Geological Survey under 30 U.S.C. §§ 1002-03 (1976), rejecting offeror's competitive geothermal lease bid as too low, offeror has the burden of showing that the rejection is arbitrary and capricious and that Survey has no rational basis for rejection of the bid.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

A district manager's decision reached in the exercise of administrative discretion pursuant to the Taylor Grazing Act of 1934 may be regarded as arbitrary or capricious only where it is not supportable on any rational basis and the burden is on the appellant to show by substantial evidence that the decision is improper. A district manager's decision not to reissue a grazing lease for a certain area until that area is fenced and to reduce appellant's AUM's accordingly rests on a rational basis where the facts show that this unfenced area adjoins the bombing range and grazing thereon could result in trespass on the bombing range, inconsistent with the use of the range.

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

In review proceedings of notices of violation and cessation orders, the burden of going forward to establish a prima facie case rests with OSM and the ultimate burden of persuasion rests with the applicant for review.

Dean Trucking Co., Inc., 1 IBSMA 229 (Sept. 11, 1979)
86 I.D. 437

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of claim letters and pleadings alleging that the contracting officer's findings of fact and decision are erroneous in certain respects. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of C.I.C. Construction Co., Inc., IBCA-1190-4-78
(Sept. 25, 1979) 86 I.D. 475

The burden of showing that late payment of annual rental for an oil and gas lease is justifiable is on the lessee. An assertion of personal reasons without further explanation, is insufficient to meet this burden. Nor does reliance on receipt of a courtesy notice justify failure to pay rental timely.

William A. Klug, 43 IBLA 255 (Oct. 10, 1979)

Under 43 CFR 3120.3-1, the United States reserves the right to reject all bids, but any rejection must be based on a record sufficient to establish that the rejection has a reasonable basis in fact.

Gerald S. Ostrowski (On Reconsideration after Remand), 44 IBLA 17 (Nov. 6, 1979)

Discovery

A motion for remand of a mining claim contest for further hearing on the grounds of prejudicial surprise, based upon Government counsel's failure to supplement interrogatory answers listing witnesses and exhibits as ordered in lieu of prehearing conference, will be denied where contestee's counsel ignored repeated offers of continuance made at various stages of the hearing.

United States v. Theresa E. Robinson, 21 IBLA 363
(Aug. 25, 1975) 82 I.D. 414

Where a contract for the construction of a powerline contained two rates for the erection of tower steel and the contractor, contending that the contract was ambiguous (which was admitted by the Government in part), claimed additional compensation at the higher helicopter erection rate and filed a request for the production of documents in nine separate categories which request was opposed by the Government principally upon the ground that the documents were irrelevant to any issue in the appeal, the Board, following the rule that it is not a valid objection that information sought in discovery proceedings may not be admissible at the hearing if the request appears reasonably calculated to lead to the discovery of admissible evidence, grants appellant's request in principal part.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74
(Dec. 18, 1975) 82 I.D. 625

RULES OF PRACTICE--Continued

APPEALS--Continued

Discovery--Continued

A mining claim is properly declared null and void where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

United States v. Wayne E. Bighley, 30 IBLA 21 (Apr. 7, 1977)

The parties are entitled to discover all documents not privileged which are reasonably likely to lead to admissible evidence and do not cause a burden disproportionate to the probable benefit from the requested discovery taking into account the size of the claims involved and their nature as well as the nature of the defenses.

Appeal of Airco, Inc., IBCA-1074-8-75 (Oct. 17, 1977)
84 I.D. 838

The Federal Rules of Civil Procedure are not binding on administrative agencies.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

Dismissal

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons therefor within the time allowed.

M. R. Williamson, 19 IBLA 6 (Feb. 20, 1975)

An appeal by a concessionaire at a wildlife refuge who alleges that Government harassment of the public, failure to repair roads and other actions resulted in a decrease of business and who seeks therefor to be relieved of payment of a semi-annual franchise fee of 3 percent of gross receipts required under the concession agreement and given the right to sell beer, inter alia, is dismissed for lack of jurisdiction, since the agreement contains no adjustment provisions and the relief requested entails reformation of the agreement, but is remanded to the contracting officer, who has wide discretion under the agreement to provide relief, for further consideration in the light of the Board's opinion.

Appeal of Pirate's Cove Marina, IBCA-1018-2-74
(Feb. 25, 1975) 83 I.D. 065

An appeal from a district manager's decision reducing the authorized use of lands offered under a sec. 15 grazing lease will be dismissed where the grazing season covered by the term of the proposed lease has expired and the appellant must meet a precondition before any future lease issues. The dismissal, however, will be without prejudice to the appellant's submitting evidence to the district manager to disprove the determination of the carrying capacity of the range, if he otherwise meets the precondition for a lease.

John T. Murtha, 19 IBLA 97 (Mar. 4, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal will be dismissed where the claim on which it is based arose from a mistake in connection with the contractor's bid, resulting from the failure of his timely dispatched telegraphic bid modification to be received prior to bid opening and where it is clear that he intended to file his appeal in the General Accounting Office.

Appeal of P. L. Larsen Co., IBCA-1054-1-75 (Mar. 25, 1975)

An appeal from a decision denying a petition for deferment of annual assessment work on mining claims will be dismissed where the petitioner files evidence with its appeal showing that the assessment work was subsequently performed.

Hibernia Silver Mines, Inc., 20 IBLA 12 (Apr. 14, 1975)

Failure to serve notice of an appeal on an interested party pursuant to 25 CFR 2.36 does not make dismissal mandatory but it may be considered as cause for dismissal by the officer to whom it is made.

Administrative Appeal of J. B. Love v. Area Director, Aberdeen Area Office, et al., 4 IBIA 74 (June 6, 1975)

Under 43 CFR 4.402, an appeal is subject to summary dismissal by the Board of Land Appeals when notice of appeal or statement of reasons is not served on adverse parties within the time prescribed.

Elmer Peterson, 21 IBLA 52 (June 17, 1975)

An appeal to the Board of Land Appeals will be dismissed where the appellant failed to file a timely notice of appeal. A notice of appeal, although received within the 10-day grace period, but not transmitted within the 30-day period following service of the decision, is not timely filed and must be dismissed.

Shelley Anne Trainor, 21 IBLA 326 (Aug. 14, 1975)

Where a contractor has filed an appeal and has failed to file a complain when often requested to do so over a 2-year period, the appeal is dismissed for want of prosecution.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (Sept. 2, 1975) 82 I.D. 427

An appeal from a decision canceling a grazing lease for loss of control of non-Federal lands upon which the lease was based will be dismissed where the lease has expired by its terms. The dismissal will be without prejudice to a new lease application for the grazing lands which the appellant may decide to submit.

Ralph Rogers, 22 IBLA 31 (Sept. 10, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support of the appeal within the time permitted by Departmental regulation.

Thurman Banks et al., 22 IBLA 205 (Oct. 15, 1975)

A qualified heir or devisee of a deceased applicant for a mineral lease under 43 CFR 3564, or the administrator or executor of his estate, may receive the lease in the applicant's stead, or maintain an appeal from the rejection of such application on the same basis as the heirs or representatives of deceased applicants for other kinds of mineral leases where no third-party interests require consideration.

George W. Wright, Sr. (Deceased), 22 IBLA 280 (Oct. 30, 1975)

A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed and the appeal will be dismissed.

Appellant's failure to timely serve and prove service of appeal on adverse party named in the decision from which the appeal is taken will subject the appeal to summary dismissal.

Richard E. and Phyllis Lee, 22 IBLA 284 (Oct. 30, 1975)

An appeal to the Board of Land Appeals will be dismissed where the appellant failed to file a timely notice of appeal, and the notice, though filed within the 10-day grace period, was not transmitted within the 30-day period following service of the decision.

Martha Charlie, 22 IBLA 287 (Oct. 30, 1975)

An appeal to the Director, Geological Survey, is properly dismissed by him where the appellant failed to comply with the procedure prescribed by the applicable regulations with respect to the form and content of the notice of appeal, the time afforded for the filing of additional reasons, arguments or briefs, and the procedure for obtaining an extension of such time, and no valid reason is given which would warrant excusing such failures as an exercise of administrative discretion.

Robert E. Ferguson, 23 IBLA 29 (Dec. 2, 1975)

A notice of appeal to the Board of Land Appeals must be dismissed where it is not timely filed within the ambit of 43 CFR 4.411(a), and 43 CFR 4.401, since the requirement of timely filing is jurisdictional.

Lavonne E. Grewell, 23 IBLA 190 (Jan. 6, 1976)

A notice of appeal to the Board of Land Appeals must be dismissed in accordance with 43 CFR 4.411(b), where it was filed within the grace period provided by 43 CFR 4.401(a), but was not transmitted within the appeal filing period.

Michael J. S. Miller, 23 IBLA 224 (Jan. 8, 1976)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

On appeals from decisions to proceed with proposed timber sales, when the district manager tentatively proposes to withdraw the tracts from sale plans in order more fully to examine appellants' allegations and material submitted in a related appeal, the decisions will be set aside and the cases remanded for further consideration.

Alan Winter, Elizabeth Freeman, et al., 23 IBLA 343 (Jan. 21, 1976)

Where a construction contractor failed to appeal from a notice of termination for default which included findings that the contractor's delay in performing the work was not due to excusable causes, but did file a timely appeal from a damage assessment for, inter alia, the increased cost of completing the work, the Board denied the Government's motion to strike paragraphs of the complaint alleging that the contractor's delay was due to excusable causes and that the termination for default was improper since under the so-called Fulford doctrine, which had been held equally applicable to construction contracts, an appeal from a damage or excess cost assessment following a termination for default allows the contractor to contest the propriety of the termination.

Where certain paragraphs of a complaint filed by a construction contractor in an appeal from a damage assessment following a termination for default raised issues as to the propriety of the termination, the Board denied a Government motion to strike those paragraphs based on contentions that the contractor had agreed that delay in completion of the work was not excusable and that the contractor's agreement to a revised date for completion of the work precluded it from raising issues as to the excusability of delays occurring prior to the agreement, since it is well settled that accord and satisfaction is an affirmative defense which must be pleaded and proved and that allegations of accord and satisfaction raise factual issues as to the intent of the parties at the time of the alleged accord.

Appeal of Airco, Inc., IBCA-1074-8-75 (Apr. 6, 1976)
83 I.D. 137

Where an issue which gives rise to an appeal is mooted during the pendency of the appeal, the appeal will not be dismissed where the priority of the application is dependent upon the correctness of the original decision.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17, 1976)

Where an appellant fails to point out some error in a decision or to show that he has wrongly been deprived of some right, and instead limits his statement of reasons for appeal to allegations which are irrelevant and immaterial, the appeal will be dismissed as frivolous.

Duncan Miller, 28 IBLA 62 (Nov. 10, 1976)

A contractor's claim for additional costs attributed to the Government's delay in requesting contemplated installation services under a contract calling for the furnishing of governors for hydraulic turbines is dismissed for want of jurisdiction where the Board finds that the claim asserted is not redressable under the Changes clause of Standard Form 32 (Supply Contract) or under the special Suspension of Deliveries (or Services) clause which reserves to the Government the right to suspend services and preserves the contractor's right to make claim therefor but fails to provide that any costs attributable to such suspension shall be recoverable by way of an adjustment to the contract price.

Appeal of Cheston Co., IBCA-1093-1-76 (Nov. 19, 1976)
84 I.D. 924

An appeal to the Board of an automatic termination of an oil and gas lease will be dismissed as not ripe where appellant sends the appeal to the Board before a Notice of Termination of Lease has been issued and a Petition for Reinstatement rejected by the State Office, Bureau of Land Management.

Read & Stevens, Inc.; Franklin, Aston & Fair, Ltd.; and Colorado Interstate Gas Co., 29 IBLA 154 (Mar. 4, 1977)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Duncan Miller, 29 IBLA 174 (Mar. 14, 1977)

Duncan Miller, 34 IBLA 283 (Apr. 17, 1978)

United States v. David F. Mangum and Donald E. LeGuerre, 35 IBLA 131 (May 22, 1978)

Duncan Miller, 41 IBLA 129 (June 13, 1979)

Where an appellant withdraws an appeal, the appeal must be dismissed.

Where a decision by a Bureau of Land Management official is interlocutory in nature and the appellant fails to show any reason why the decision is in error, or should not be implemented, a purported appeal from such a decision must be dismissed.

Elko County Board of County Supervisors, 29 IBLA 220 (Mar. 23, 1977)

An appeal taken by a subcontractor in its own name is dismissed where the Board finds the subcontractor has no standing to invoke the provisions of the Disputes Clause as a means of securing an adjudication by the Board of the rights and obligations of the contesting parties.

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 25, 1977)
84 I.D. 119

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Board of Land Appeals will be dismissed where the enactment of legislation renders moot the questions on appeal.

Gibbonsville Townsite, 30 IBLA 74 (Apr. 18, 1977)

An appeal to the Board of Land Appeals will be dismissed where the enactment of the Federal Land Policy and Management Act renders moot the questions on appeal.

Silver Peak Townsite (Trustee), 30 IBLA 357 (June 10, 1977)

The Government's motion to dismiss an appeal because of the failure of the contractor to give the 20-day written notice required by the Changes clause is denied, where the Board finds that there was timely notice with respect to some of the costs on which the claim is based and that the hearing to be held may show that some or all of the remaining costs fall within other recognized exceptions to the strict application of the 20-day cost-limitation provision.

Appeal of Hartford Accident and Indemnity Co., IBCA-1139-1-77 (June 23, 1977) 84 I.D. 296

Where a right-of-way application has been rejected in part, an appeal therefrom should be dismissed if not filed within the period prescribed in 43 CFR 4.411.

Jerrold R. Cooley, Lucy M. Cooley, 32 IBLA 387 (Nov. 7, 1977)

A Government motion to dismiss an appeal is denied where the ground for the motion is that the contractor failed to raise its allegations before the contracting officer prior to filing its appeal but the Board finds that the contracting officer did have an opportunity to pass upon the principal allegations of the contractor prior to rendering his decision.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Dec. 2, 1977) 84 I.D. 967

An appeal is dismissed as untimely when it was not filed within 30 days of the date on which the contracting officer's final decision was received by a person who was not employed by the appellant but who was authorized to receive his mail during the 6 weeks the appellant was away on vacation. While the appellant denied that such person was authorized to sign a return receipt for certified mail, the Board noted that no question of authority to sign for certified mail had been raised in the contractor's letter requesting an extension in the time for filing the appeal and that no such question was raised until the Government's motion to dismiss the instant appeal was filed.

A motion to dismiss an appeal is granted when the appellant had failed to file an appeal within 30 days of the date on which the contracting officer's final decision was received. Respecting the contractor's argument that the 30-day time limit should be waived, the Board noted that the right to extend the time for filing a notice of appeal had been specifically excepted from the grant of authority to the Board as set forth in the regulations governing Board proceedings.

Appeal of Harry Claterbos Co., Jr., IBCA-1153-5-77 (Dec. 6, 1977) 84 I.D. 969

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

The Government's opposition to appellant's request for a hearing and its motion for partial summary judgment in a default termination case are both denied where the contractor contends and the Government denies that the delays experienced by the contractor in attempting to perform the contract were excusable and the Board finds that determining whether delays are excusable in such circumstances involves resolving a fact question which should only be done after the parties have had an opportunity to present their evidence at a hearing where one has been requested.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Apr. 14, 1978) 85 I.D. 77

The publication by the Director, Geological Survey, of a "Notice to Lessees" is not an action appealable to this Board under 30 CFR Part 290, where the "Notice" is a generalized instruction to subordinates of the Geological Survey, and the "Notice," itself, is not self-executing. Specific application of the "Notice" to a lessee is, however, a matter subject to appeal and review within the Board of Land Appeals.

Tenneco Oil Co., 36 IBLA 1 (June 27, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer was not proper and must be rejected, the applicant may not thereafter appeal the matter to this Board merely because the Bureau of Land Management, in implementing the Board's decision, mistakenly advised him that he had the right to such an appeal. The matter is res judicata, and the subsequent appeal must be dismissed.

Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that certain coal prospecting permits have terminated and that no preference right to a coal lease is attached to any of them, an unapproved assignee of the permits may not thereafter appeal the matter to this Board following Bureau of Land Management notification to the permittees of this Board's decision. The matter is res judicata and such subsequent appeal must be dismissed, absent compelling legal or equitable considerations.

Peabody Coal Co., 36 IBLA 242 (Aug. 14, 1978)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

When appellant has failed to serve a copy of the notice of appeal and statement of reasons on the adverse party named in the decision appealed from, in the manner prescribed in 43 CFR 4.401(c), and the adverse party moves for summary dismissal under 43 CFR 4.413(b), the appeal is properly dismissed where appellant has not responded to the motion for dismissal or acknowledged the procedural deficiency.

Dawley Creek Ranch and L. Franklin Mader, 37 IBLA 30 (Sept. 18, 1978)

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer may properly be rejected for the reason that title to the lands involved was uncertain, and a new lease offer for the same lands is again rejected for the same reason, the matter is res judicata, and the subsequent appeal is properly dismissed.

N. L. Industries, Inc., 37 IBLA 335 (Oct. 26, 1978)

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error and the allegations in his statement of reasons are vague and unsupported.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

Where the Board of Land Appeals determines that matters raised in an appeal may become moot, or in any event, will be more clearly delineated by further action of BLM relating to subject matter of the appeal, such an appeal will be dismissed without prejudice to the appellant, subject to its right to assert its views in any future appeal to the Board.

State of Alaska, Department of Highways, 40 IBLA 48 (Mar. 15, 1979)

An appeal from a decision respecting a petition for deferment of assessment work on lode mining claims is properly dismissed where it appears that appellant has no interest in the claims.

Rasmussen Drilling, Inc., 40 IBLA 173 (Apr. 3, 1979)

The Department has determined that an official of the Bureau of Indian Affairs is not entitled to represent a Native allotment applicant in an appeal to the Board of Land Appeals. However, where the case involves the propriety of proofs submitted by the Bureau of Indian Affairs in behalf of a deceased Native allotment applicant, that issue may be resolved.

Ernest L. Olson, Jr. (Deceased), 41 IBLA 179 (June 22, 1979)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

The Department has determined that an official of the Bureau of Indian Affairs is not entitled to represent a Native allotment applicant in an appeal to the Board of Land Appeals. However, where the partial rejection of an Alaska Native allotment application turns on the resolution of a factual issue, the case will be remanded to BLM so that heirs or claimants to the estate of the deceased applicant may be afforded notice and opportunity for hearing.

Unknown Heirs of Higley Kelly, 41 IBLA 387 (July 24, 1979)

An appeal is dismissed where the contractor has not shown any intent to appeal to an authority higher than the contracting officer from a final decision disallowing certain costs.

Appeal of Geer, Dubois, Inc., IBCA-1212-9-78 (July 27, 1979)

Where BLM fails to show that there was service of a decision rejecting an Alaska Native allotment and the applicant learns of his rejection 4-1/2 years after rejection, the applicant may file a timely appeal within 30 days of notice of the decision.

Gust J. Heft, Sr., 42 IBLA 86 (Aug. 13, 1979)

Where a decision by an official of the Bureau of Land Management is interlocutory in nature, and the future implementation of the decision is contingent upon the occurrence of an event not scheduled, an appeal from such decision will be dismissed in the absence of any showing of necessity for immediate resolution.

Marathon Oil Co., Union Oil Co. of California, 43 IBLA 309 (Oct. 22, 1979)

An appeal to the Director, U.S. Geological Survey, is properly dismissed where the appellant failed to file a timely notice of appeal in the proper office within 30 days from service of the decision appealed from in order to comply with the requirements of the applicable regulations in 30 CFR 290.

Mesa Petroleum Co., 44 IBLA 165 (Nov. 30, 1979)

Effect of

A Bureau of Land Management State Office may reconsider one of its decisions prior to the filing of an appeal in the case, but the filing of an appeal terminates that authority.

John J. Sexton (On Reconsideration), 20 IBLA 167 (May 7, 1975)

A Bureau of Land Management office has no jurisdiction to take further action on an oil and gas lease application where there has been an appeal to the Board of Land Appeals on that application.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of--Continued

An appeal from a decision rejecting a color of title application will stay the running of the 60-day period, provided by the decision appealed from, for filing affidavits and evidence in support of arguments that the dependent resurvey of the land applied for erroneously classified the land as swamp and overflowed in character.

Paul H. and Fay L. Sleeper, 22 IBLA 318 (Nov. 10, 1975)

Notice of appeal of all issues in a contracting officer's decision puts all the issues contained therein "at issue" before the IBCA until the parties state the issues then in dispute in the Complaint and Answer.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977)
84 I.D. 1019

A timely appeal from rejection of an oil and gas lease offer because of a determination of known geologic structure suspends the rejection pending decision by this Board, and where the Geological Survey rescinds the KGS determination as having been erroneously made during the pendency of the appeal, the status quo ante of land involved is restored.

Where land was omitted from an oil and gas lease only because of an erroneous KGS determination, and the applicant has preserved his priority by timely appealing the rejection, it is proper to amend such lease to include such omitted land when the Geological Survey rescinds its erroneous KGS determination.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

Where BLM issues a decision requiring that an oil and gas offeror submit additional advance rental within 30 days, and the offeror files a timely appeal to this Board, the running of the 30 days is suspended. Following affirmation by this Board of BLM's decision, the offeror is properly given the entire 30 days within which to submit the additional rental.

Mobil Oil Corp., 35 IBLA 375 (June 23, 1978)
85 I.D. 225

When an appeal is filed with the Board of Surface Mining and Reclamation Appeals from a decision made by the Office of Surface Mining Reclamation and Enforcement, that office loses jurisdiction and has no authority to take any action concerning it until that jurisdiction is restored by action of the Board that is dispositive of the appeal.

Apache Mining Co., 1 IBSMA 14 (July 13, 1978)
85 I.D. 395

When an appeal is filed with the Board of Land Appeals from a decision made by an official of the Bureau of Land Management, that official loses jurisdiction of the case and has no further authority to take any action concerning it until his jurisdiction over the matter is restored by action dispositive of the appeal.

Duncan Miller, 38 IBLA 154 (Dec. 5, 1978)

Warren D. Elmore, 42 IBLA 91 (Aug. 13, 1979)

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of--Continued

While an appeal of one decision of the BLM is pending before the Board, the BLM is without authority to exercise jurisdiction in the matter which is the subject of the appeal. Where the BLM exercises jurisdiction and the subsequent decision presents the same issue as the first, and the parties are given an adequate opportunity at the hearing and on appeal to present evidence and argue as to this issue, the Board will proceed to consider both decisions on their merits.

California Ass'n of Four-Wheel Drive Clubs et al., 38 IBLA 361 (Dec. 29, 1978)

The receipt of timber sale bids by BLM pursuant to an advertised sale and subsequent to the filing of a protest of the sale, does not constitute an irrevocable commitment to complete the sale where all bidders acknowledge that the final decision to award the sale contract is contingent upon adjudication of the protest and the decision reached on any proper appeal therefrom. Hence, receipt of bids by BLM does not prejudice the rights of protestants to have their protest ruled upon and any proper appeal heard.

Blaine Mikels et al., 41 IBLA 305 (July 3, 1979)

Generally the Geological Survey may reconsider and modify or revoke its own decision in the absence of an appeal to the Board of Land Appeals. However, the filing of an appeal to the Board removes the matter from the jurisdiction of Survey pending disposition of the appeal.

Where Geological Survey and one of two parties to a compulsory unitization of two outer continental shelf oil and gas leases request a remand of a Survey decision for further consideration, and certain issues raised on appeal would appropriately be better first considered by Survey, the case will be remanded to Survey. In the circumstances, a request to stay implementation of Survey's prior decision may be granted by the Board unless and until Survey acts upon the request when it reconsiders the case.

Sun Oil Co., 42 IBLA 254 (Aug. 23, 1979)

An oil and gas lease in its extended term because of the termination of an approved unit plan to which it was committed, on which lease there is no well capable of production in paying quantities, terminates automatically by operation of law where the annual rental is not paid on or before the anniversary date of the lease. The pendency of an appeal regarding the termination date of the extension does not excuse the failure to maintain the lease in good standing by timely payment of the annual rental.

Tenneco Oil Co., Cordillera Corp., 44 IBLA 171 (Nov. 30, 1979)

Extensions of Time

While the burden of showing an excusable cause of delay to exist is on the construction contractor, the invoking of this rule presupposes that the Government will leave this responsibility with the contractor, or, if it undertakes to correspond directly with the subcontractors or suppliers concerning delays experienced, it will inform them of the criteria set forth

RULES OF PRACTICE--Continued

APPEALS--Continued

Extensions of Time--Continued

in the contract for establishing an excusable cause of delay.

Appeal of The J. C. Hester Co., Inc., IBCA-1114-7-76 (Jan. 14, 1977)

A motion to dismiss an appeal is granted when the appellant had failed to file an appeal within 30 days of the date on which the contracting officer's final decision was received. Respecting the contractor's argument that the 30-day time limit should be waived, the Board noted that the right to extend the time for filing a notice of appeal had been specifically excepted from the grant of authority to the Board as set forth in the regulations governing Board proceedings.

Appeal of Harry C. Oaterbos Co., JV, IBCA-1153-5-77 (Dec. 6, 1977) 84 I.D. 969

Failure to Appeal

The assignor of an oil and gas lease is not barred from protesting against a decision approving the assignment because of his failure to appeal from an earlier decision denying the assignee's request for assignment approval but stating that approval would be permitted upon performance of certain conditions.

Joseph Alstad, 19 IBLA 104 (Mar. 4, 1975)

Where request for reconsideration of Bureau of Land Management 1968 homesite decision is taken in 1974, appellant stating he was never served with decision, but where receipt in record shows service in 1968, reconsideration should be denied.

Hollis E. Justis, 21 IBLA 63 (June 25, 1975)

In the absence of a timely appeal from a decision rejecting the State of Alaska's selection application for certain lands, the lands are no longer segregated from other disposition and a withdrawal of those lands may attach, precluding subsequent selection by the State.

State of Alaska, 22 IBLA 229 (Oct. 16, 1975)

Where an offeror failed to take an appeal from a decision issuing a noncompetitive oil and gas lease but erroneously rejecting certain available lands while correctly rejecting other lands in the offer and the offeror failed to retender rental for the erroneously rejected lands, and where the error could be readily apparent to the offeror, and the offeror acquiesced for a year and a half in the lease as issued, such failure precludes the amendment of the lease and the offeror is deemed to have abandoned his preference right as the first-qualified applicant to lease the land which was erroneously rejected.

John Oakason, 23 IBLA 336 (Jan. 21, 1976)

Appellant's earlier failure to protest and appeal a decision rejecting his challenge to another grazier's base property commensurability rating, bars him from appealing a subsequent decision rejecting an application containing the same challenge.

Phil J. Hillberry, 24 IBLA 283 (Mar. 31, 1976)

RULES OF PRACTICE--Continued

APPEALS--Continued

Failure to Appeal--Continued

Where a construction contractor failed to appeal from a notice of termination for default which included findings that the contractor's delay in performing the work was not due to excusable causes, but did file a timely appeal from a damage assessment for, *inter alia*, the increased cost of completing the work, the Board denied the Government's motion to strike paragraphs of the complaint alleging that the contractor's delay was due to excusable causes and that the termination for default was improper since under the so-called *Fulford* doctrine, which has been held equally applicable to construction contracts, an appeal from a damage or excess cost assessment following a termination for default allows the contractor to contest the propriety of the termination.

Appeal of Airco, Inc., IBCA-1074-8-75 (Apr. 6, 1976) 83 I.D. 137

Where a State swampland selection has been rejected on the ground that the land selected has been disposed of, but in fact that land was available to the State, the judgment is valid and binding until set aside. Since the Secretary has jurisdiction to determine whether the land selected is available, he has jurisdiction to decide erroneously. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land to a color of title applicant's predecessor, and an adverse right has intervened.

John Stuart Hunt, Sherman M. Hunt, 31 IBLA 304 (July 22, 1977) 84 I.D. 421

In order for a State to receive legal title to a swampland selection, the Secretary of the Interior or his delegate must determine that the land is swamp in character and available for disposition under the grant. An erroneous decision that selected land is unavailable because it was sold prior to the selection is valid and binding until set aside. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land at a tax sale to the predecessor in interest of a color of title applicant, and an adverse right, *i.e.*, a class 2 color of title application, has intervened.

White Castle Lumber and Shingle Co., Ltd., 32 IBLA 129 (Sept. 12, 1977)

Where a right-of-way application has been rejected in part, an appeal therefrom should be dismissed if not filed within the period prescribed in 43 CFR 4.411.

Jerrold B. Cooley, Lucy E. Cooley, 32 IBLA 387 (Nov. 7, 1977)

When BLM adjudicates issue and offeror does not appeal, doctrine of administrative finality, which is administrative counterpart of res judicata, generally bars consideration of new appeal arising from later proceeding involving same lease and same issue. Accordingly, BLM acted properly in dismissing appellant's protest, filed Nov. 18, 1977, against oil and gas lease annual rental adjudicated on July 27, 1977.

Wilfred Plomis, 35 IBLA 1 (May 3, 1978)

RULES OF PRACTICE--Continued

APPEALS--Continued

Failure to Appeal--Continued

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Ralph and Ruth Dickinson, 39 IBLA 258 (Feb. 15, 1979)

An appeal is dismissed where the contractor has not shown any intent to appeal to an authority higher than the contracting officer from a final decision disallowing certain costs.

Appeal of Geer, Dubois, Inc., IBCA-1212-9-78 (July 27, 1979)

Where BLM fails to show that there was service of a decision rejecting an Alaska Native allotment and the applicant learns of his rejection 4-1/2 years after rejection, the applicant may file a timely appeal within 30 days of notice of the decision.

Gust J. Beft, Sr., 42 IBLA 86 (Aug. 13, 1979)

A summary dismissal of a private contest against an Alaska homestead becomes a final administrative ruling on that contest when the contestant, instead of appealing the dismissal, files a second contest which must be considered an entirely new action. When a final departmental adjudication has been made, the doctrine of administrative finality, which is the administrative counterpart of the principle of res judicata, generally bars consideration of a new appeal arising from a later proceeding involving the same homestead and the same issue.

Joe O. Amberger, 43 IBLA 178 (Sept. 28, 1979)

Hearings

When an appellant asserts facts which do not on their face sustain the contentions on appeal, this Board will deny a request for a hearing to determine the asserted issues of fact. 43 CFR 4.415.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (Mar. 5, 1975)

In a mining claim contest, the claimant is the proponent of the rule or order that he has complied with the provisions of the mining law, which have been brought into issue, and the Government bears the burden only of presenting a prima facie case of invalidity; the claimant must then preponderate on the issues litigated.

Where the hearing record in a mining claim contest is unsatisfactory, a "stipulation" on another issue may have prevented the introduction of evidence relevant to the issue on appeal, the parties will not be unduly burdened, and further proceedings will likely be productive of relevant evidence, the Board may remand the case for additional hearing.

United States v. Ed Brandt, 21 IBLA 166 (July 22, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

A request for a hearing in connection with an appeal will not be granted where undisputed facts are of record, and the determination rests on legal conclusions based on such facts.

Concho Petroleum Co. and J. C. Karcher, 22 IBLA 135 (Sept. 26, 1975)

Where the decision appealed from is based essentially on the facts disclosed by appellant, there is no dispute as to any material fact, and the sole question presented is a legal issue, no evidentiary hearing is required on appeal.

Sarah E. Lindgren, Emery V. Showalter, 23 IBLA 174 (Dec. 31, 1975)

When an appellant from a decision canceling a headquarters site claim does not assert facts which, taken as true, would constitute the initiation of a claim protected from the effect of a withdrawal, the appellant is not entitled to notice and a hearing on the factual issues pertaining to the establishment of a valid existing right.

Mary C. Polen, 24 IBLA 100 (Mar. 1, 1976)

Cross motions for summary judgment are denied where the Board finds the stipulated record furnishes an insufficient basis for an informed judgment and that a hearing will be required for determining the merits of the entitlement question presented for decision.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA-1072-7-75 (Apr. 7, 1976) 83 I.D. 148

One who appeals from the rejection of a trade and manufacturing site purchase application and disputes the factual findings and conclusions in the field examiner's report, is not entitled to an opportunity for a hearing on the disputed issues of fact when appellant's assertions of use and improvement, taken as true, do not show use of the land that qualifies her for the right of purchase.

Evelyn M. Bunch, 25 IBLA 44 (May 13, 1976)

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. E. Hinds et al., 25 IBLA 67 (June 1, 1976) 83 I.D. 275

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

The regulations do not provide for hearings as a matter of right on trespass violations involving a sec. 15 grazing lessee. For the Board of Land Appeals to exercise its discretion under 43 CFR 4.415 and order a hearing, the appellant must allow facts which, if proved, would entitle him to the relief sought.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976) 83 I.D. 269

It is within the discretion of the Board of Land Appeals to grant a request for a hearing on a question of fact. In order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976) 83 I.D. 518

Where applicant alleges facts which, even if proved to be true, would not change the legal conclusion of the case, a request for a hearing will be denied.

Frank G. Wells, 28 IBLA 113 (Nov. 15, 1976)

A request for a hearing on a Native allotment application will be denied where an evidentiary hearing is not necessary because there are no facts in dispute and the sole question is a legal issue.

Mable Melovedoff, 29 IBLA 250 (Mar. 25, 1977)

Where the Bureau of Land Management has dismissed a protest to the issuance of a special land use permit and on appeal the protestant requests an evidentiary hearing, such request will be denied when no evidence is proferred by protestant which would engender the belief that the development of further facts would require a different result.

Department of the Navy, Naval Weapons Center, China Lake, 29 IBLA 324 (Mar. 30, 1977)

The obligation for proving a valid color of title claim is upon the claimant. Where a claimant has alleged facts which, if proven, may establish her color of title, the Board of Land Appeals may order a fact-finding hearing pursuant to 43 CFR 4.415.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

The obligation to establish a valid color of title claim is upon the claimant. Where a claimant has alleged facts which, if proved, may establish his color of title, the Board of Land Appeals may order a fact-finding hearing pursuant to 43 CFR 4.415.

Joe I. and Celina V. Sanchez, et al., 32 IBLA 228 (Sept. 20, 1977)

Lawrence E. Willmorth, 32 IBLA 378 (Nov. 1, 1977)

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

When a mining claim located in the Papago Indian Reservation is declared invalid for failure to pay annual rental timely, and that fact is not disputed, a hearing is not required as there are no issues of fact involved but only of law.

Louis B. Ellsworth, Jr., 33 IBLA 26 (Nov. 22, 1977)

Motion for quantum hearing will be allowed when the Government admitted liability on certain claims in the Answer and the first hearing was limited to entitlement.

Request that hearing of a substantial complex appeal be limited to "entitlement," will not be construed to be a waiver of right to hearing on "quantum" absent a clear record that the request was so intended.

Motion for reconsideration is granted where original ruling that hearing will be limited to entitlement may have contributed to lack of evidence at the hearing and where issues included complex question of concurrent fault and damages.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977) 84 I.D. 1019

The Government's opposition to appellant's request for a hearing and its motion for partial summary judgment in a default termination case are both denied where the contractor contends and the Government denies that the delays experienced by the contractor in attempting to perform the contract were excusable and the Board finds that determining whether delays are excusable in such circumstances involves resolving a fact question which should only be done after the parties have had an opportunity to present their evidence at a hearing where one has been requested.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Apr. 14, 1978) 85 I.D. 77

Where, on appeal, application for renewal of communication site rights-of-way was approved subject to condition of a lump-sum payment of an increased rental without a hearing, the decisions below will be set aside and the cases remanded for hearing and for other revisions consistent with principles enunciated in Board decisions to be followed in renewal of communication site rights-of-way and in setting increases in the amount of rental for such sites.

Donald R. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

A request for a hearing on a Native allotment application will be denied where there are no facts in dispute and the sole question is a legal issue.

Lindberg Alexander, 41 IBLA 382 (July 23, 1979)

The Board of Land Appeals has the discretion to grant a request for a hearing on issues of fact but, in order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Mardelle M. Smith, Sherman C. Smith, 42 IBLA 136 (Aug. 16, 1979)

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

Where legal conclusions may be reached upon undisputed facts and there has been no proffer of further facts which could compel different legal conclusions, a request for a hearing is properly denied.

Sam Hanlon, Sr., 42 IBLA 161 (Aug. 17, 1979)

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Andy Syndbad, 42 IBLA 313 (Aug. 29, 1979)

A request for a hearing on a Native allotment application will be denied where no factual dispute exists and all issues are legal ones.

Betty J. Thompson, 43 IBLA 174 (Sept. 28, 1979)

Motions

A contractor's petition to reopen and conduct an evidentiary hearing after an adverse decision of its appeal, which was decided on the record without an oral hearing, was denied where the petition, treated as a motion for reconsideration, not only failed to satisfy the newly discovered evidence rule but also failed to disclose the evidence which would be proffered at the hearing and thus furnished no reason for vacating the original decision.

Appeal of COAC, Inc., IBCA-1004-9-73 (Feb. 19, 1975)
82 I.D. 65

A contractor's motion for reconsideration is denied where the contractor offered to provide evidence on one claim item which was obtained after the Board's adverse decision but which could have been obtained, in the exercise of due diligence, before the hearing and where other evidence offered on all claim items was in the contractor's possession at the time of the hearing and no valid reason was given for the failure to introduce such evidence. The motion for reconsideration is not a vehicle for correction of errors or omissions by a party in the presentation of its case.

Appeal of Robert P. Jones (Contractor), IBCA-1002-8-73 (Aug. 6, 1975)

A contractor's parol evidence rule objection to the admission in evidence of the answer given to a question raised at a prebidding conference as set forth in a contemporaneous Government memorandum is overruled where the Board finds that the answer given simply reflects information contained in the invitation for bids on which the contract is based.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975)
82 I.D. 459

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions--Continued

Where an appeal is timely the absence from a contracting officer's letter of a terminal paragraph advising the contractor of his right of appeal under the Disputes clause is not a basis for remand to the contracting officer.

Claims of constructive change under a cost-plus-fixed-fee contract first presented in the notice of appeal are outside the jurisdiction of the Board and are remanded to the contracting officer for the issuance of new or supplemental findings.

Appeal of VTN Colorado, Inc., IBCA-1073-8-75 (Oct. 29, 1975)
82 I.D. 527

The Board of Land Appeals may entertain and, where appropriate, grant a motion by the Bureau of Land Management to remand a case to it for further consideration on the question of whether an environmental impact statement must be filed, even though an appellant, who has protested against a negative declaration that no impact statement is required, objects to the remand.

Harold Gillis, 24 IBLA 248 (Mar. 25, 1976)

Where a construction contractor failed to appeal from a notice of termination for default which included findings that the contractor's delay in performing the work was not due to excusable causes, but did file a timely appeal from a damage assessment for, inter alia, the increased cost of completing the work, the Board denied the Government's motion to strike paragraphs of the complaint alleging that the contractor's delay was due to excusable causes and that the termination for default was improper since under the so-called Fulford doctrine, which has been held equally applicable to construction contracts, an appeal from a damage or excess cost assessment following a termination for default allows the contractor to contest the propriety of the termination.

Where certain paragraphs of a complaint filed by a construction contractor in an appeal from a damage assessment following a termination for default raised issues as to the propriety of the termination, the Board denied a Government motion to strike those paragraphs based on contentions that the contractor had agreed that delay in completion of the work was not excusable and that the contractor's agreement to a revised date for completion of the work precluded it from raising issues as to the excusability of delays occurring prior to the agreement, since it is well settled that accord and satisfaction is an affirmative defense which must be pleaded and proved and that allegations of accord and satisfaction raise factual issues as to the intent of the parties at the time of the alleged accord.

Appeal of Aitco, Inc., IBCA-1074-8-75 (Apr. 6, 1976)
83 I.D. 137

Cross motions for summary judgment are denied where the Board finds the stipulated record furnishes an insufficient basis for an informed judgment and that a hearing will be required for determining the merits of the entitlement question presented for decision.

A stipulation as to procedure only involving two appeals arising under the same contract is disregarded where following the submission of simultaneous briefs under a cross motions for summary judgment procedure, the Board finds some of the terms of the stipulation in which it had acquiesced to be at variance with the rule in the Court of Claims against the splitting of the cause of action under a single and indivisible contract and that

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions--Continued

adherence to the stipulation could be prejudicial to the contractor in certain foreseeable circumstances. The stay of proceedings provided for by the stipulation with respect to one appeal is therefore vacated and as a corollary to such action the appellant is directed to file its complaint.

Finding that it has inherent discretion to order consolidation of appeals in appropriate cases, the Board orders the consolidation of two appeals which the appellant has asserted involve common questions of law and fact and which, in any event, arose under the same contract, involve the same attorneys and, presumably, the same witnesses.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA-1072-7-75 (Apr. 7, 1976) 83 I.D. 148

The Board of Land Appeals will entertain and grant a motion by the Bureau of Land Management to remand an oil and gas lease case on appeal to the Board from a decision holding the lease had terminated and denying a petition to reinstate the lease, where BLM discovered, while the case was on appeal, that its decision was predicated on an erroneous factual basis in that annual rental for the lease had actually been paid on time, but the check had been misplaced by BLM and was later found.

Kathryn A. Dalton, 31 IBLA 1 (June 15, 1977)

The Government's motion to dismiss an appeal because of the failure of the contractor to give the 20-day written notice required by the Changes clause is denied, where the Board finds that there was timely notice with respect to some of the costs on which the claim is based and that the hearing to be held may show that some or all of the remaining costs fall within other recognized exceptions to the strict application of the 20-day cost-limitation provision.

Appeal of Hartford Accident and Indemnity Co., IBCA-1139-1-77 (June 23, 1977) 84 I.D. 296

The Government's motion for reconsideration, which advanced a number of arguments designed to show that the Government's interpretation of the contract was reasonable, provides no reason for overturning the Board's principal decision which applied the rule of *contra proferentem*. The Board, having previously found that appellant's interpretation was reasonable, now affirms its principal decision since the rule requires interpretation against the drafter of a document to resolve an ambiguity even if each party's interpretation is reasonable.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (Sept. 30, 1977) 84 I.D. 867

Motion for a protective order to prevent the disclosure of pre-award technical discussions with bidders in a two-step IFB unsupported by affidavits that the information furnished was (a) a trade secret and was (b) furnished in confidence, was denied, but the Government is nevertheless given 45 days to file affidavits by the bidders on these and other issues.

Appeal of Airco, Inc., IBCA-1074-8-75 (Oct. 17, 1977) 84 I.D. 838

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions--Continued

A Government motion to dismiss an appeal is denied where the ground for the motion is that the contractor failed to raise its allegations before the contracting officer prior to filing its appeal but the Board finds that the contracting officer did have an opportunity to pass upon the principal allegations of the contractor prior to rendering his decision.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Dec. 2, 1977) 84 I.D. 967

An appeal is dismissed as untimely when it was not filed within 30 days of the date on which the contracting officer's final decision was received by a person who was not employed by the appellant but who was authorized to receive his mail during the 6 weeks the appellant was away on vacation. While the appellant denied that such person was authorized to sign a return receipt for certified mail, the Board noted that no question of authority to sign for certified mail had been raised in the contractor's letter requesting an extension in the time for filing the appeal and that no such question was raised until the Government's motion to dismiss the instant appeal was filed.

A motion to dismiss an appeal is granted when the appellant had failed to file an appeal within 30 days of the date on which the contracting officer's final decision was received. Respecting the contractor's argument that the 30-day time limit should be waived, the Board noted that the right to extend the time for filing a notice of appeal had been specifically excepted from the grant of authority to the Board as set forth in the regulations governing Board proceedings.

Appeal of Harry Claterbos Co., JV, IBCA-1153-5-77 (Dec. 6, 1977) 84 I.D. 965

Motion for quantum hearing will be allowed when the Government admitted liability on certain claims in the Answer and the first hearing was limited to entitlement.

Motion for reconsideration is granted where original ruling that hearing will be limited to entitlement may have contributed to lack of evidence at the hearing and where issues included complex question of concurrent fault and damages.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977) 84 I.D. 1019

The Government's opposition to appellant's request for a hearing and its motion for partial summary judgment in a default termination case are both denied where the contractor contends and the Government denies that the delays experienced by the contractor in attempting to perform the contract were excusable and the Board finds that determining whether delays are excusable in such circumstances involves resolving a fact question which should only be done after the parties have had an opportunity to present their evidence at a hearing where one has been requested.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Apr. 14, 1978) 85 I.D. 77

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions--Continued

A claim by a concessioner under a National Park Service Contract is dismissed as beyond the purview of the Board's jurisdiction where the contract contains no disputes clause and by its express terms the Contract Disputes Act of 1978 is not applicable to the claim asserted.

Appeal of Yosemite Park and Curry Co., IBCA-1232-12-78 (Mar. 16, 1979) 86 I.D. 197

An appeal is dismissed where the contractor has not shown any intent to appeal to an authority higher than the contracting officer from a final decision disallowing certain costs.

Appeal of Geer, Dubois, Inc., IBCA-1212-9-78 (July 27, 1979)

A contractor may not proceed under the provisions of the Contract Disputes Act of 1978 where the appeal is from a final decision of the contracting officer rendered and received by the appellant prior to the effective date of the Act.

Appeals of Gregory Lumber Co., Inc., IBCA-1237-12-78, 1238-12-78, 1239-12-78, 1240-12-78 (Sept. 28, 1979) 86 I.D. 520

The right to administrative relief is a privilege afforded by law to persons who consider themselves interested or aggrieved. The burden is upon the interested person to act affirmatively to protect perceived interests. Such a person is not entitled to wait until all other interested persons act, to speculate on the outcome, and then, if the decision is adverse, to seek to reopen the matter on his or her own behalf, when that person has been afforded notice of all the proceedings.

Western Slope Gas Co. (On Reconsideration), 43 IBLA 259 (Oct. 15, 1979)

The appellant's motion for reconsideration provides no reason for overturning the Board's principal decision which dismissed the subject appeals for lack of jurisdiction. The Board, having found significant current precedents consistent with the view that the effective date of the Contract Disputes Act of 1978 was Mar. 1, 1979, and that claims appealed to the Board prior to that date were not pending then before the Contracting Officer, finds those precedents controlling without analysis of all matters argued in appellant's brief.

Appeals of Gregory Lumber Co., Inc. (On Reconsideration), IBCA-1237-12-78, 1238-12-78, 1239-12-78, 1240-12-78 (Nov. 23, 1979) 86 I.D. 654

Notice of Appeal

Where an appeal is timely the absence from a contracting officer's letter of a terminal paragraph advising the contractor of his right of appeal under the Disputes clause is not a basis for remand to the contracting officer.

Claims of constructive change under a cost-plus-fixed-fee contract first presented in the notice of appeal are outside the jurisdiction of the Board and are remanded to the contracting officer for the issuance of new or supplemental findings.

Appeal of WIN Colorado, Inc., IBCA-1073-8-75 (Oct. 29, 1975) 82 I.D. 527

A Government motion to dismiss an appeal is denied where the ground for the motion is that the contractor failed to raise its allegations before the contracting officer prior to filing its appeal but the Board finds that the contracting officer did have an opportunity to pass upon the principal allegations of the contractor prior to rendering his decision.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Dec. 2, 1977) 84 I.D. 967

Notice of appeal of all issues in a contracting officer's decision puts all the issues contained therein "at issue" before the IBCA until the parties state the issues then in dispute in the Complaint and Answer.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977) 84 I.D. 1019

Where, in a decision holding a Native allotment for approval and a State selection for rejection to the extent of a conflict, the Bureau of Land Management grants the State 30 days to initiate a private contest challenging the Native allotment, the 30-day appeal period will commence upon expiration of the 30 days accorded the State for initiation of a private contest and not with receipt of the decision.

State of Alaska et al., 42 IBLA 94 (Aug. 16, 1979)

Where a person moves from his record address without leaving a forwarding address, and a copy of a BLM decision affecting him is mailed to this last address of record and returned by the postal service as undeliverable, the decision is considered to have been "served" him as of the date it is returned to BLM. 43 CFR 4.401(c). Accordingly, the deadline for filing a notice of appeal is 30 days after the date the decision is returned to BLM.

BLM may not properly waive the untimely filing of a notice of appeal under 43 CFR 4.401(a) where it is clear that the notice of appeal was not transmitted to BLM until after the end of the time in which it was required to be filed.

Where a notice of appeal is not timely filed, it must be dismissed.

Nicky Nickoli, 43 IBLA 296 (Oct. 17, 1979)

Reconsideration

A contractor's petition to reopen and conduct an evidentiary hearing after an adverse decision of its appeal, which was decided on the record without an oral hearing, was denied where the petition, treated as a motion for reconsideration, not only failed to satisfy the newly discovered evidence rule but also failed to disclose the evidence which would be proffered at the hearing

RULES OF PRACTICE--Continued

APPEALS--Continued

Reconsideration--Continued

and thus furnished no reason for vacating the original decision.

Appeal of COAC, Inc., IBCA-1004-9-73 (Feb. 19, 1975)
82 I.D. 65

A contractor's motion for reconsideration is denied where the contractor offered to provide evidence on one claim item which was obtained after the Board's adverse decision but which could have been obtained, in the exercise of due diligence, before the hearing and where other evidence offered on all claim items was in the contractor's possession at the time of the hearing and no valid reason was given for the failure to introduce such evidence. The motion for reconsideration is not a vehicle for correction of errors or omissions by a party in the presentation of its case.

Appeal of Robert P. Jones (Contractor), IBCA-1002-8-73 (Aug. 6, 1975)

Where in moving for reconsideration of a decision denying its claim for constructive acceleration, the contractor contended that the Bureau's failure to promptly investigate its claim of delay due to unusually severe weather amounted to a denial of a request for a time extension and that the denial plus other actions of Bureau inspectors constituted an order to complete the work by the specified completion date irrespective of excusable delay and thus was an acceleration order, the Board ruled that a denial of a request for a time extension was insufficient in and of itself to constitute constructive acceleration and reviewing the evidence, affirmed the denial of the claim, holding that the actions of the inspectors were regarded as suggestions by the contractor and accepted or rejected depending on whether the suggestions were practical or economical.

Appeal of Iversen Construction Co. (a/k/a ICONCO), IBCA-981-1-73 (Apr. 19, 1976)
83 I.D. 179

Where an offer of land under the Mining Claims Occupancy Act may include land within a right-of-way being condemned for a State highway, and where such evidence was not before the Board when it considered the appeal, a petition for reconsideration may be granted.

Robert P. Starritt (On Reconsideration), 26 IBLA 205 (Aug. 16, 1976)

Where a petition for reconsideration of a previous Board decision applying departmental contest procedures to Alaska Native allotment applications fails to show that the original decision was erroneous in any matter, the original decision will be sustained.

Donald Peters (On Reconsideration), 28 IBLA 153 (Nov. 23, 1976)
83 I.D. 564

Repeating arguments made during the hearing and in the posthearing briefs is not a basis for granting a motion for reconsideration.

Appeal of Halvorson-Lents (A Joint Venture), IBCA-1059-2-75 (May 9, 1977)

RULES OF PRACTICE--Continued

APPEALS--Continued

Reconsideration--Continued

A request to reconsider a 1968 decision by the Department rejecting final proof for a homestead entry and canceling the entry is properly rejected in the absence of a showing of "extraordinary circumstances." In the absence of compelling legal or equitable reasons for reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Pekka K. Merikallio, 30 IBLA 157 (May 18, 1977)

Where a decision of the Board of Land Appeals is based upon an interpretation of Departmental policy, and that policy is subsequently revised and clarified so as to impel a different result in the case without prejudice to the right of any third party, on reconsideration by the Board that portion of its original decision will be modified and the revised policy will be implemented.

Warner Bergman (On Reconsideration), 31 IBLA 21 (June 20, 1977)

The Government's motion for reconsideration, which advanced a number of arguments designed to show that the Government's interpretation of the contract was reasonable, provides no reason for overturning the Board's principal decision which applied the rule of *contra proferentem*. The Board, having previously found that appellant's interpretation was reasonable, now affirms its principal decision since the rule requires interpretation against the drafter of a document to resolve an ambiguity even if each party's interpretation is reasonable.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (Sept. 30, 1977)
84 I.D. 867

Upon reconsideration, the Board finds that where the Government issues an "Extra Work Order" under a "force account" provision for minor extra work not provided for in other pay items, at agreed on rates, the contractor is entitled to be paid for inefficiency, rework costs and delay costs when moisture causes borrow material placed under the extra work order, to become muddy. However, the appellant's failure to give prompt notice of the claim under the force account provision caused the Government to order added pay item work, thus the claim must be reduced by the amount of added pay item payment.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Nov. 4, 1977)
84 I.D. 898

The doctrine of finality of administrative action, counterpart of res judicata, designed to achieve orderliness in the administration of public lands, bars reconsideration of a 1936 General Land Office decision, rendered according to procedures then in effect, which canceled a stock-raising homestead entry and from which no appeal was taken.

John Lynn Brough, 33 IBLA 36 (Nov. 25, 1977)

Motion for quantum hearing will be allowed when the Government admitted liability on certain claims in the Answer and the first hearing was limited to entitlement.

Request that hearing of a substantial complex appeal be limited to "entitlement," will not be construed to be a waiver of right to hearing on "quantum" absent a clear record that the request was so intended.

The findings and determinations of the contracting officer which have been appealed become some evidence to be considered and weighed by the Board together with all the other evidence in the record when the appeal is decided by the Board.

Motion for reconsideration is granted where original ruling that hearing will be limited to entitlement may have contributed to lack of evidence at the hearing and where issues included complex question of concurrent fault and damages.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977) 84 I.D. 1019

A request for allowance of attorney fees is denied on a motion for reconsideration where the prior decision specifically considered and disallowed these costs in accordance with prevailing law.

A motion for reconsideration is denied where based on the same arguments made and fully considered in the principal decision.

Appeals of JB&C Co., IBCA-1020-2-74 and IBCA-1033-4-74 (Feb. 22, 1978) 85 I.D. 67

A Government motion for reconsideration is denied where the Board finds that a cost estimate (cost and pricing data) was not a firm offer to perform the work within the hours and at the prices or rates specified, but was rather simply the initial basis for negotiating a cost-plus-fixed-fee contract.

Appeal of W. F. Sigler & Associates, IBCA-1159-7-77 (Apr. 14, 1978) 85 I.D. 167

A request to reconsider a final decision of the Department rejecting applications for homestead entry is properly rejected in the absence of a showing of extraordinary circumstances. Except where compelling legal and equitable reasons for reconsideration are shown, the principle of res judicata and its counterpart, finality of administrative action, will bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Dallas C. Qualman et al., 36 IBLA 119 (July 25, 1978)

When an appellant files a timely motion for reconsideration asking that an equitable adjustment be increased, the effect is to prevent finality from attaching to the original decision and the Board has jurisdiction to consider a Government response asking that the equitable allowance be reduced, even though the response was not filed within the 30-day period allowed for initial filing of a motion for reconsideration.

When arguments advanced in a motion for reconsideration convince the Board that the formula used in determining an equitable adjustment was not the most accurate method but where neither party submits a better method, the Board will vacate its original finding regarding

the equitable adjustment and make a recomputation based on the evidence of record.

Appeal of J. A. LaPorte, Inc., IBCA-1146-3-77 (Feb. 14, 1979) 86 I.D. 125

Reconsideration of a decision of this Board is permitted only in extraordinary circumstances. A motion to reconsider will be denied when it is premised on the same arguments as those which were fully considered prior to the Board's decision, in the absence of compelling reasons.

The right to administrative relief is a privilege afforded by law to persons who consider themselves interested or aggrieved. The burden is upon the interested person to act affirmatively to protect perceived interests. Such a person is not entitled to wait until all other interested persons act, to speculate on the outcome, and then, if the decision is adverse, to seek to reopen the matter on his or her own behalf, when that person has been afforded notice of all the proceedings.

In the absence of compelling legal and equitable reasons supporting reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim, the same parties, and the same issues.

Western Slope Gas Co. (On Reconsideration), 43 IBLA 259 (Oct. 15, 1979)

The appellant's motion for reconsideration provides no reason for overturning the Board's principal decision which dismissed the subject appeals for lack of jurisdiction. The Board, having found significant current precedents consistent with the view that the effective date of the Contract Disputes Act of 1978 was Mar. 1, 1979, and that claims appealed to the Board prior to that date were not pending then before the Contracting Officer, finds those precedents controlling without analysis of all matters argued in appellant's brief.

Appeals of Gregory Lumber Co., Inc. (On Reconsideration), IBCA-1237-12-78, 1238-12-78, 1239-12-78, 1240-12-78 (Nov. 23, 1979) 86 I.D. 654

Service on Adverse Party

An appeal to the Board of Land Appeals will not be dismissed for lack of service upon the adverse party where the adverse party is not specifically designated as such in the decision from which the appeal is taken.

T. T. Cowgill et al., 19 IBLA 274 (Apr. 7, 1975)

Under 43 CFR 4.402, an appeal is subject to summary dismissal by the Board of Land Appeals when notice of appeal or statement of reasons is not served on adverse parties within the time prescribed.

Elmer Peterson, 21 IBLA 52 (June 17, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party--Continued

Appellant's failure to timely serve and prove service of appeal on adverse party named in the decision from which the appeal is taken will subject the appeal to summary dismissal.

Richard E. and Phyllis Lee, 22 IBLA 284 (Oct. 30, 1975)

An appeal from a decision of the Bureau of Land Management rejecting a grazing lease application and approving a conflicting application will not be summarily dismissed for failure to serve an adverse party who is not specifically designated as such in the decision appealed from. A decision of the Bureau of Land Management that a conflicting applicant has a preference right to the grazing lease will be affirmed when the applicant appealing fails to indicate any error in the decision.

Jack Sedman, 25 IBLA 277 (June 25, 1976)

When a contestee fails to answer a complaint, the allegations are deemed admitted and the case may be dismissed with prejudice as to that contestee. In addition, in a Government contest, the complaint is not deemed to be insufficient or subject to dismissal where the Government fails to name all interested parties, or for failure to serve every party who has been named.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

When appellant has failed to serve a copy of the notice of appeal and statement of reasons on the adverse party named in the decision appealed from, in the manner prescribed in 43 CFR 4.401(c), and the adverse party moves for summary dismissal under 43 CFR 4.413(b), the appeal is properly dismissed where appellant has not responded to the motion for dismissal or acknowledged the procedural deficiency.

Dawley Creek Ranch and L. Franklin Mader, 37 IBLA 30 (Sept. 18, 1978)

Standing to Appeal

A qualified heir or devisee of a deceased applicant for a mineral lease under 43 CFR 3564, or the administrator or executor of his estate, may receive the lease in the applicant's stead, or maintain an appeal from the rejection of such application on the same basis as the heirs or representatives of deceased applicants for other kinds of mineral leases where no third-party interests require consideration.

George W. Wright, Sr. (Deceased), 22 IBLA 280 (Oct. 30, 1975)

A city organized under Alaska State law has standing to appeal from the rejection of its application for townsite deeds to land within its city limits, and the awarding of deeds to occupants of the townsite lots at the time of final subdivisional survey.

City of Klawock v. P. H. Andrew et al., City of Klawock v. State of Alaska, Department of Highways, 24 IBLA 85 (Feb. 25, 1976) 83 I.D. 47

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal--Continued

Where a reduction in the authorized use of land leased pursuant to sec. 15 of the Taylor Grazing Act is required in order to conform to the actual grazing capacity of the land, the full amount of that reduction must be imposed immediately rather than gradually. Where acceptance of the reduction is made a condition precedent for the approval of an assignment and for the issuance of a new lease, the assignee and prospective lessee will be held to have the same right to appeal the reduction as the original lessee.

Rube W. Evans et al., 26 IBLA 15 (July 7, 1976)

A person who admits he has no interest in a mining claim which has been held invalid for failure of the named contestee to file an answer other than he disputes a charge that the land in the contested claim is not mineral in character or that the date of a withdrawal is incorrect is not adversely affected by the decision and has no standing to appeal.

United States v. William Robinson & William McCaskill, Phelps Dodge Corp., 26 IBLA 137 (Aug. 2, 1976)

One having no right or privilege to the use or possession of Indian lands by way of a lease, permit or license has no standing to appeal under 25 CFR Part 2.

Administrative Appeal of Dean Hansen v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 5 IBIA 250 (Nov. 16, 1976) 83 I.D. 561

An appeal taken by a subcontractor in its own name is dismissed where the Board finds the subcontractor has no standing to invoke the provisions of the Disputes Clause as a means of securing an adjudication by the Board of the rights and obligations of the contesting parties.

An appeal is dismissed where the prime contractor has stated that nothing will be done to further an appeal taken by a subcontractor in its own name and the Board finds that the action of the prime contractor in giving the Government written notice of a potential claim of changed conditions by the subcontractor and any statements made by the prime contractor endorsing the potential claim at the time such notice was given are not a sufficient basis upon which to ground jurisdiction over the appeal.

Appeal of Divide Constructors, Inc., Subcontractor to Granite Construction Co., IBCA-1134-12-76 (Mar. 29, 1977) 84 I.D. 115

The thrust of 43 CFR 4.410, which limits the right to appeal to those who are parties to a case, is not to restrict access to administrative review of actions of Bureau of Land Management officials, but to provide a logical framework within which such review might be exercised. An "appeal" by an individual or group which has not, prior to the "appeal," participated in the formulation of the action to which objection is being voiced, should be treated as a protest under the provisions of 43 CFR 4.450-2.

California Ass'n of Four Wheel Drive Clubs et al., 30 IBLA 383 (June 10, 1977)

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal--Continued

An organization appealing a Bureau of Land Management decision will be considered a "party to a case" within the meaning of 43 CFR 4.410 where the organization uses the lands in question, is recognized as a bona fide representative of the community, receives notice of Bureau actions concerning the lands, actively and extensively participates in the formulation of land use plans for the lands in question, and takes a position in a dispute concerning the use of the land contrary to another group or individual.

Headwaters, 33 IBLA 91 (Dec. 16, 1977

Under 43 CFR 3522.2-1(a), a proposed readjustment of a coal lease should not be appealed directly to the Board of Land Appeals under 43 CFR 4.410, but, rather, a lessee's objections thereto should first be referred to and acted upon by the State Office, Bureau of Land Management.

California Portland Cement Co., 33 IBLA 223 (Dec. 28, 1977)

Under 43 CFR 4.410, any party to a case who is adversely affected by a decision of the Bureau of Land Management has a right of appeal to the Board of Land Appeals, even where the decision concerns legislation which has been repealed.

Fancher Bros., 33 IBLA 262 (Jan. 5, 1978)

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

A decision to return an application for a public sale constitutes an action adverse to the applicant by an officer of the Bureau of Land Management and is thus appealable to the Board of Land Appeals under 43 CFR 4.410.

United Park City Mines Co., 33 IBLA 358 (Jan. 18, 1978)

An insurance company is refused permission to participate directly in prosecution of an appeal proceeding with a view to recovering the amount paid to the contractor under a builder's risk insurance policy as part of the contractor's differing site conditions claim, where the grounds assigned for the participation are that the interests of the contractor and the insurance company may well prove to be adverse and that the insurance company has the right to participate directly by reason of its status as a partial subrogee, the Board finding (i) that the privity of contract rule rather than the real party in interest rule is controlling in appeal proceedings and (ii) that it has no authority under the Disputes clause to adjudicate the rights of the contractor and the insurance company should they prove to be adverse, irrespective of whether such rights are asserted by the insurance company under a release and assignment of interest executed by the contractor or as a partial subrogee and without regard to the fact that the appellant had authorized the insurance company to file a separate complaint and to prosecute its claim through its own attorneys in the appellant's name.

Appeal of Zurn Engineers, IBCA-1176-12-77 (July 20, 1978) 85 I.D. 279

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal--Continued

A group of individual landowners, whose lands assertedly abut a Federal tract which is offered for timber sale, have standing to appeal from a decision dismissing their protest against the proposed sale.

George Jalbert et al., 39 IBLA 205 (Feb. 2, 1979)

The characterization of a submission as an "appeal" or as a "protest" is not binding upon a State Office; rather, reference must be made to the nature of the submission to determine whether the submission is properly treated as an "appeal" *or* as a "protest."

Duncan Miller (On Reconsideration), 39 IBLA 312 (Feb. 23, 1979)

When a State Office rejects the offer of a first-drawn applicant in a drawing under the simultaneous oil and gas leasing program, an appeal by the applicant raises the issue of his qualifications to hold the lease. The qualifications of the second-drawn applicant are irrelevant until such time as the offer of the first-drawn applicant is rejected and all his avenues of appeal are exhausted. However, it is not improper for BLM to name the second-drawn applicant as an adverse party in a decision rejecting the first-drawn applicant.

Thomas R. Flickinger, William S. Flickinger, et al., 40 IBLA 53 (Mar. 16, 1979)

This Board approves the rule that a surety may prosecute and appeal in its own name when it enters into a takeover agreement to complete performance of a defaulted contract, but in the absence of such an agreement, the surety may appeal under the defaulted contract only in a representative capacity with the consent of its principal, the principal contractor on the defaulted contract.

Appeal of General Construction Corp. of America by Financial Indemnity Co. (Its Surety), IBCA-1178-2-78 (Mar. 29, 1979) 86 I.D. 206

The right of appeal to the Board is limited to parties to a case adversely affected by a decision of BLM. A person protesting a timber sale does not become a party to a case until such time as BLM has issued a final decision adverse to his or her interests. The case is ordinarily ripe for appeal only when an adverse decision is made on the protest.

Elaine Mikels et al., 41 IBLA 305 (July 3, 1979)

A person has no standing to appeal with respect to action taken on a simultaneous oil and gas lease when he has not shown that he participated in the drawing or that he has a present interest in the lease.

Duncan Miller, 44 IBLA 259 (Dec. 19, 1979)

Statement of Reasons

A contractor's petition to reopen and conduct an evidentiary hearing after an adverse decision of its appeal, which was decided on the record without an oral hearing, was denied where the petition, treated as a motion for reconsideration, not only failed to satisfy the newly discovered evidence rule but also failed to disclose the evidence which would be proffered at the hearing

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

and thus furnished no reason for vacating the original decision.

Appeal of COAC, Inc., IBCA-1004-9-73 (Feb. 19, 1975)
82 I.D. 65

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons therefor within the time allowed.

W. R. Williamson, 19 IBLA 6 (Feb. 20, 1975)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Duncan Miller, 20 IBLA 19 (Apr. 16, 1975)

Duncan Miller, 21 IBLA 21 (June 16, 1975)

Duncan Miller, 22 IBLA 336 (Nov. 11, 1975)

Earl D. Roberts, 28 IBLA 286 (Dec. 27, 1976)

Duncan Miller, 29 IBLA 174 (Mar. 14, 1977)

Duncan Miller, 34 IBLA 283 (Apr. 17, 1978)

United States v. David F. Mangum and Donald E. DeGuerre, 35 IBLA 131 (May 22, 1978)

Duncan Miller, 41 IBLA 129 (June 13, 1979)

An appeal is subject to summary dismissal where a statement of reasons is not timely filed. A statement of reasons in support of an appeal which does not point affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

J. Bernard Roberts, 21 IBLA 204 (July 30, 1975)

A contractor's motion for reconsideration is denied where the contractor offered to provide evidence on one claim item which was obtained after the Board's adverse decision but which could have been obtained, in the exercise of due diligence, before the hearing and where other evidence offered on all claim items was in the contractor's possession at the time of the hearing and no valid reason was given for the failure to introduce such evidence. The motion for reconsideration is not a vehicle for correction of errors or omissions by a party in the presentation of its case.

Appeal of Robert P. Jones (Contractor), IBCA-1002-8-73 (Aug. 6, 1975)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support of the appeal within the time permitted by Departmental regulation.

Thurman Banks et al., 22 IBLA 205 (Oct. 15, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed and the appeal will be dismissed.

Richard E. and Phyllis Lee, 22 IBLA 284 (Oct. 30, 1975)

An appeal to the Board of Land Appeals is subject to summary dismissal when appellant fails to file a statement of reasons in support of his appeal.

Nathern Lewis Stacy, 23 IBLA 166 (Dec. 24, 1975)

Mere accusations by appellant that a company which was awarded an oil and gas lease was involved in fraudulent and corruptive practices, without substantiating this charge, is not a supportable basis for an appeal. A Statement of Reasons which does not point out affirmatively in what respect the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons was filed, and may be dismissed.

Duncan Miller, 25 IBLA 263 (June 24, 1976)

A statement of reasons which merely contains broadside assertions and does not point out affirmatively in what respect the decision appealed from is in error may be dismissed.

Duncan Miller, 26 IBLA 37 (July 8, 1976)

Statements of reasons for appeal will not be accorded favorable consideration where they do not state with some particularity the exact reason for appeal and the allegations are not supported by evidence.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error, but merely asserts that earlier filed sodium permit applications were erroneously approved, does not meet the requirements of the Department's rules of practice and is properly dismissed.

James G. Macey, 26 IBLA 191 (Aug. 10, 1976)

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant is not sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a United States interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Jean Oakason, 27 IBLA 41 (Sept. 22, 1976)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

Where an appellant fails to point out some error in a decision or to show that he has wrongly been deprived of some right, and instead limits his statement of reasons for appeal to allegations which are irrelevant and immaterial, the appeal will be dismissed as frivolous.

Duncan Miller, 28 IBLA 62 (Nov. 10, 1976)

The Government's motion for reconsideration, which advanced a number of arguments designed to show that the Government's interpretation of the contract was reasonable, provides no reason for overturning the Board's principal decision which applied the rule of *contra proferentem*. The Board, having previously found that appellant's interpretation was reasonable, now affirms its principal decision since the rule requires interpretation against the drafter of a document to resolve an ambiguity even if each party's interpretation is reasonable.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (Sept. 30, 1977) 84 I.D. 867

A Government motion to dismiss an appeal is denied where the ground for the motion is that the contractor failed to raise its allegations before the contracting officer prior to filing its appeal but the Board finds that the contracting officer did have an opportunity to pass upon the principal allegations of the contractor prior to rendering his decision.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Dec, 2, 1977) 84 I.D. 967

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Duncan Miller, 33 IBLA 83 (Dec. 8, 1977)

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error and the allegations in his statement of reasons are vague and unsupported.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not with some particularity show adequate reason for appeal and support the allegations with evidence showing error.

Valley Mobile Communications, Inc., 38 IBLA 359 (Dec. 29, 1978)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

The relaxed procedural rules relating to the filing of statements of reasons for appeal in Native allotment cases enunciated in the letter of Sept. 24, 1975, and extended in the order of Nov. 26, 1976, IBLA 76-715, are hereby revoked. All future requests for extensions of time must comport with the regulations found at 43 CFR 4.22(f)(2).

State of Alaska et al., 42 IBLA 94 (Aug. 16, 1979)

Allegations on appeal will not be afforded favorable consideration where they are not stated with some particularity and supported by evidence.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

An appellant may adopt arguments prepared by another person and submit them as his or her own statement of reasons so long as appellant acts in good faith and the statement is relevant to the issues on appeal.

Alice M. Hardy, 44 IBLA 5 (Nov. 6, 1979)

Timely Filing

Where request for reconsideration of Bureau of Land Management 1968 homesite decision is taken in 1974, appellant stating he was never served with decision, but where receipt in record shows service in 1968, reconsideration should be denied.

Hollis E. Justis, 21 IBLA 63 (June 25, 1975)

An appeal to the Board of Land Appeals will be dismissed where the appellant failed to file a timely notice of appeal. A notice of appeal, although received within the 10-day grace period, but not transmitted within the 30-day period following service of the decision, is not timely filed and must be dismissed.

Shelley Anne Trainor, 21 IBLA 326 (Aug. 14, 1975)

Where a right-of-way application has been rejected in part, an appeal therefrom should be dismissed if not filed within the period prescribed in 43 CFR 4.411.

Jerrold B. Cooley, Lucy B. Cooley, 32 IBLA 367 (Nov. 7, 1977)

An appeal is dismissed as untimely when it was not filed within 30 days of the date on which the contracting officer's final decision was received by a person who was not employed by the appellant but who was authorized to receive his mail during the 6 weeks the appellant was away on vacation. While the appellant denied that such person was authorized to sign a return receipt for certified mail, the Board noted that no question of authority to sign for certified mail had been raised in the contractor's letter requesting an extension in the time for filing the appeal and that no such question was raised until the Government's motion to dismiss the instant appeal was filed.

A motion to dismiss an appeal is granted when the appellant had failed to file an appeal within 30 days of the date on which the contracting officer's final decision was received. Respecting the contractor's argument that the 30-day time limit should be waived, the Board noted that the right to extend the time for

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

filing a notice of appeal had been specifically excepted from the grant of authority to the Board as set forth in the regulations governing Board proceedings.

Appeal of Harry Claterbos Co., JV, IBCA-1153-5-77 (Dec. 6, 1977) 84 I.D. 969

When an appellant files a timely motion for reconsideration asking that an equitable adjustment be increased, the effect is to prevent finality from attaching to the original decision and the Board has jurisdiction to consider a Government response asking that the equitable allowance be reduced, even though the response was not filed within the 30-day period allowed for initial filing of a motion for reconsideration.

Appeal of J. A. LaPorte, Inc., IBCA-1146-3-77 (Feb. 14, 1979) 86 I.D. 125

The applicable regulation, 43 CFR 4.414 (1977), allows the Board some discretion in deciding whether to disregard the answer of an appellee who fails to file an answer within 30 days after service on him of the notice of appeal or statement of reasons and whose delay in filing is not waived under the provisions of 43 CFR 4.401(a) (1977).

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (May 10, 1979)

Where a person moves from his record address without leaving a forwarding address, and a copy of a BLM decision affecting him is mailed to this last address of record and returned by the postal service as undeliverable, the decision is considered to have been "served" him as of the date it is returned to BLM. 43 CFR 4.401(c). Accordingly, the deadline for filing a notice of appeal is 30 days after the date the decision is returned to BLM.

BLM may not properly waive the untimely filing of a notice of appeal under 43 CFR 4.401(a) where it is clear that the notice of appeal was not transmitted to BLM until after the end of the time in which it was required to be filed.

Where a notice of appeal is not timely filed, it must be dismissed.

Nicky Nickoli, 43 IBLA 296 (Oct. 17, 1979)

An appeal to the Director, U.S. Geological Survey, is properly dismissed where the appellant failed to file a timely notice of appeal in the proper office within 30 days from service of the decision appealed from in order to comply with the requirements of the applicable regulations in 30 CFR 290.

Mesa Petroleum Co., 44 IBLA 165 (Nov. 30, 1979)

EVIDENCE

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant. However, if the Government in a mining contest fails to present a prima facie case and the contestees move to dismiss the case and rest, the contest

RULES OF PRACTICE--Continued

EVIDENCE--Continued

complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, any issue in doubt as to discovery raised by the evidence must be resolved against the party having the risk of nonpersuasion, the mining claimant. If a mining claimant fails to show by a preponderance of the evidence as to such issue that there has been a discovery of a valuable mineral deposit he has not satisfied his burden of proof and an administrative law judge must declare the claim invalid, rather than leave the question of the claim's validity unresolved.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

In a mining contest a mining claimant is the true proponent under the Administrative Procedure Act, 5 U.S.C. § 556(d) (1970), of a rule or order that he has complied with the mining laws, and he has the ultimate burden of proof--the risk of nonpersuasion--to show by a preponderance of the evidence that there is a valuable mineral deposit on the claim, when the Government has made a prima facie case of lack of such a discovery.

Evidence submitted on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered except for the limited purpose of deciding whether a further hearing is warranted. However, such evidence will only be considered if accompanied by a cogent explanation of why it was not tendered at the hearing.

United States v. Charles J. MacIver et al., 20 IBLA 352 (June 11, 1975)

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489, as amended by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end.

Southern Pacific Co., Heirs of George H. Wedekind, 20 IBLA 365 (June 12, 1975)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

A request for an evidentiary hearing will be denied where there is no dispute involving a material fact, and there is no chance of development of further material facts which would require a different decision.

Beulah Moses, 21 IBLA 157 (July 21, 1975)

Stanley P. McCormick, 23 IBLA 304 (Jan. 16, 1976)

An evidentiary hearing will be denied where the information supplied by the applicant shows, as a matter of law, that the requirements of the statute have not been met.

Warner Bergman, 21 IBLA 173 (July 25, 1975)

A lack of sales of a mineral of widespread occurrence, such as sand and gravel, may raise a presumption that there was no demand for the mineral during that time, and, hence, the material was not marketable. The presumption may be overcome with credible evidence to the contrary or by bona fides in development.

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered except for the limited purpose of deciding whether a further hearing is warranted. However, such evidence will only be considered if accompanied by a cogent explanation of why it was not tendered at the hearing.

United States v. C. V. Hallenbeck et al., 21 IBLA 296 (Aug. 11, 1975)

A motion for remand of a mining claim contest for further hearing on the grounds of prejudicial surprise, based upon Government counsel's failure to supplement interrogatory answers listing witnesses and exhibits as ordered in lieu of prehearing conference, will be denied where contestee's counsel ignored repeated offers of continuance made at various stages of the hearing.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

A contractor's parol evidence rule objection to the admission in evidence of the answer given to a question raised at a prebidding conference as set forth in a contemporaneous Government memorandum is overruled where the Board finds that the answer given simply reflects information contained in the invitation for bids on which the contract is based.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from a rejection of a Native allotment application in the absence of a satisfactory showing why the evidence was not submitted to Bureau of Land Management within the period afforded the applicant for the submission of such evidence.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

A claim for acceleration under a contract for the construction of footings for a transmission line is denied where one of appellant's principal contentions was that in a telephone conversation following record snow in late September the project engineer had directed that men and equipment be added to the job in order to finish the work by the contract completion date of Nov. 1, but in correspondence conducted with the Government for almost 6 months after such telephone conversation the contractor failed to refer to the directions purportedly received from the project engineer and even failed to reference the particular telephone conversation. Actions taken by the Government's principal inspector were also found not to constitute acceleration orders when the evidence clearly showed that both parties viewed the inspector's action as involving suggestions rather than directions and that whether the suggestions were accepted by the contractor's job superintendent depended upon the exercise of his business judgment.

Appeal of Iversen Construction Co. (a/k/a Iconco), IBCA-981-1-73 (Dec. 30, 1975) 82 I.D. 646

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary with the Secretary of the Interior. However, where there does appear to be a dispute as to material facts raised by conflicting affidavits as to the alleged use of land by conflicting applicants, a further field investigation will be directed in an attempt to resolve the factual uncertainties.

Amelia K. Blastervold et al., 23 IBLA 207 (Jan. 6, 1976)

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from rejection of a Native allotment satisfactory to it why the evidence was not submitted to the Bureau of Land Management within the 60-day period afforded the applicant to submit a further evidence in support of his application. General, rather than specific, allegations of difficulties in travel and communicating in Alaska are not satisfactory showings of the reason for late filing of such evidence.

Linda L. Walker, 23 IBLA 299 (Jan. 14, 1976)

Evidence offered on appeal from an initial decision by an administrative law judge after a hearing in a contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. George R. Edeline et al., 24 IBLA 34 (Feb. 17, 1976)

David A. Burns, 30 IBLA 359 (June 10, 1977)

Joe I. Sanchez and Celina V. Sanchez, et al., 42 IBLA 176 (Aug. 22, 1979)

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered except for the limited purpose of deciding whether a further hearing is warranted.

United States v. Gary C. Fichtner et al., 24 IBLA 128 (Mar. 3, 1976)

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

Where the Government fails to present a prima facie case, a contestee, upon timely motion, may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record. Therefore, even if the Government has failed to make a satisfactory prima facie case, or the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderance of the evidence, bearing the risk of nonpersuasion if he fails.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered in the absence of a compelling showing that it could not be tendered at the hearing, and even then such evidence may only be considered for the purpose of determining whether a rehearing is warranted.

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant is not sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a United States interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Jean Oakason, 27 IBLA 41 (Sept. 22, 1976)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

United States v. Arizona Mining and Refining Co., Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

United States v. R. B. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

United States v. Andy Syndbad, 42 IBLA 313 (Aug. 29, 1979)

While the burden of showing an excusable cause of delay to exist is on the construction contractor, the invoking of this rule presupposes that the Government will leave this responsibility with the contractor, or, if it undertakes to correspond directly with the subcontractors or suppliers concerning delays experienced, it will inform them of the criteria set forth in the contract for establishing an excusable cause of delay.

Appeal of The J. C. Hester Co., Inc., IBCA-1114-7-76 (Jan. 14, 1977)

Evidence tendered on appeal from a mining contest may only be considered for the limited purpose of determining whether a further hearing is warranted.

United States v. George J. Hunt and A. H. Goodwin, 29 IBLA 86 (Feb. 23, 1977)

A field examination report of a trade and manufacturing site claim is not evidence on which the final action of cancellation may be taken, until such time as the pertinent facts are admitted by the applicant or the report is admitted into evidence at a hearing initiated by a contest complaint.

John B. Coghill, 29 IBLA 177 (Mar. 18, 1977)

Evidence tendered on appeal from an adverse decision in a mining claim contest can only be considered to determine whether a further hearing on the contest should be granted. Where the appellant shows no substantial equitable basis for holding such a hearing and where no substantial expectation appears to exist that such a hearing would produce more conclusive evidence on the issue, a further hearing will not be ordered.

United States v. Bradley F. Denham, 29 IBLA 165 (Mar. 18, 1977)

A lode mining claim for barite is properly declared null and void in the absence of a showing of a discovery on the claim of a deposit of barite which would warrant a prudent man in further expending his labor and means in the reasonable expectation of developing a valuable mine. Evidence of mineralization which may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

Once the Government has established in a mining claim contest a prima facie case that the claims are not valid for lack of discovery, the burden shifts to the contestee to prove the discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Howard S. McKenzie, 29 IBLA 270 (Mar. 28, 1977)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant, but if the Government in a contest fails to present a prima facie case and the contestee moves to dismiss the case and rests, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by contestee shows there has not been a discovery, it may be used in reaching a decision that the claim is invalid regardless of any defects in the prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, and a mining claimant fails to show discovery by a preponderance of the evidence, he has not satisfied his burden of proof and the claim must be declared invalid.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

In a Government contest challenging the validity of mining claims located for a clay-type material, an adequate prima facie case is established where there are expert witness opinions that the deposit is only a common clay or shale and it cannot meet refractory standards. The contestees then must go forward with evidence to rebut the Government's case with a preponderance of the evidence.

United States v. Thomas J. Peck et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

Under a contract requiring contractor to provide all necessary material, equipment and labor, the contractor's admission that it did not have adequate equipment or an efficient work force, as well as a lack of experience in the work required to be performed does not meet the burden of proof to justify an extension of time.

Appeal of Scona, Inc., IBCA-1094-1-76 (May 6, 1977)

Government witnesses in a contest proceeding who are qualified by education and experience are competent to testify as experts with reference to the prudent man rule.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

Past evidence of successful mining activity has limited probative value in determining whether there is a present discovery of a valuable mineral deposit on a mining claim, and assay reports can be given little weight when they are not supported by evidence as to who took the sample assayed, where it was taken, and what procedures were followed in taking the sample.

United States v. Lee Nicholson et al., 31 IBLA 224 (July 7, 1977)

After holding a hearing pursuant to the Administrative Procedure Act, an administrative law judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence. Because a grazing trespass proceeding is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

When 33 percent of the available forage in a grazing allotment is on Federal land and the remainder is on private land, it is appropriate to find that 33 percent of the forage consumed by cattle throughout the allotment was Federal forage, in the absence of evidence to the contrary.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

To establish the mineral character of railroad grant lands under the Act of July 1, 1862 (12 Stat. 489), *as amended*, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--on the critical date are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

Southern Pacific Transportation Co., 32 IBLA 218 (Sept. 19, 1977)

Where a contestee fails to follow up his initial suggestion at the hearing that a deposition of a possible witness be taken with a proper request, it is not error for the administrative law judge to decide the case on the record made at the hearing.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

A party seeking a partial refund of the purchase price under the risk of loss provision of a contract for the cash sale of vegetative resources pursuant to the Materials Act of July 31, 1947, must present substantial evidence of the quantity of resources lost which otherwise would have been harvested.

Alma D. LeBaron, Jr., 32 IBLA 299 (Sept. 29, 1977)

The Goverment has the burden of proof that the contractor failed to deliver the goods. The contractor has the burden of proof that its failure was excusable. Where the only evidence of excusability was a letter from the contractor saying that it was delayed by delays in procurement of components and unexpectedly slower rates of system checkout and software debugging, the contractor has not carried its burden of proof of excusability and the appeal is denied.

Appeal of CSE, Inc., IBCA-1137-12-76 (Nov. 10, 1977) 84 I.D. 517

Motion for reconsideration is granted where original ruling that hearing will be limited to entitlement may have contributed to lack of evidence at the hearing and where issues included complex question of concurrent fault and damages.

Appeal of Scona, Inc., IBCA-1094-1-76 (Dec. 28, 1977) 84 I.D. 1019

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

Ray L. Virgin, 33 IBLA 354 (Jan. 18, 1978)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

What men have or have not done over a period of years is proper evidence as to the conduct of a prudent man in the same or very nearly the same circumstances. Where mining claims had been held for many years and little or no commercial production was achieved on such claims, it may be concluded that no prudent man would have been justified in the belief that the mineral deposit could be developed, extracted, and marketed at a reasonable profit.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

Evidentiary submissions on appeal can be considered only for the limited purpose of determining whether a further hearing should be granted. The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

There is not a sufficient equitable basis for reopening a hearing in a mining contest because of an alleged fire to the contestee's home 3 days before the scheduled hearing where neither she nor her attorney who had entered an appearance in the case requested a postponement of the hearing or a continuation of the hearing after it had been held. Also, a further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery of a valuable mineral deposit.

United States v. Florence J. Mattox, 36 IBLA 171 (July 31, 1978)

In mining claim contest, Government must only go forward with evidence to establish prima facie case of no discovery of valuable mineral deposits, and burden then shifts to mining claimant to prove by preponderance of evidence that his claim is valid.

Government has established prima facie case when its mineral examiner testifies that he has examined mining claims in issue and found mineral values insufficient to support finding of discovery of valuable deposits.

United States v. Michael E. Marion, 37 IBLA 68 (Sept. 18, 1978)

Assay reports have limited probative value as to the existence of a valuable mineral deposit on a mining claim when they are not supported by evidence as to how and where the samples were taken.

United States v. John S. Porter, 37 IBLA 313 (Oct. 25, 1978)

United States v. John E. Burt et al., 43 IBLA 363 (Oct. 29, 1979)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

Where the evidence as to specific trespass indicates that of a number of cattle counted some were located on private intermingled land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

When on appeal a sufficient showing is made to call into question a determination that land lies within a known geologic structure of a producing oil or gas field, and a hearing is requested, the decision may be set aside and remanded for hearing.

Jack J. Pender, 40 IBLA 26 (Mar. 9, 1979)

Where a Native allotment application is filed before the death of an applicant, proof of the applicant's use and occupancy, if otherwise timely, may be filed by the appropriate official of the Bureau of Indian Affairs pursuant to 43 CFR 2561.2(a) after the applicant's death. A decision rejecting the application because the proof was filed after the applicant's death must be set aside where the proof is not inconsistent with the application. Further proceedings must be served upon the heirs, known or unknown, by appropriate service, and also upon conflicting claimants, such as the State of Alaska.

Ernest L. Olson, Jr. (Deceased), 41 IBLA 179 (June 22, 1979)

It was proper to deny mining claimants' request to redrill on mining claims after the land was withdrawn from mining where the work would be an effort to make a discovery of a valuable mineral deposit within the claim rather than simply a confirmation or corroboration of a discovery prior to the withdrawal.

United States v. William Lavon Chappell et al., 42 IBLA 74 (Aug. 13, 1979)

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of claim letters and pleadings alleging that the contracting officer's findings of fact and decision are erroneous in certain respects. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of C.I.C. Construction Co., Inc., IBCA-1190-4-78 (Sept. 25, 1979) 86 I.D. 475

GOVERNMENT CONTESTS

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant. However, if the Government in a mining contest fails to present a prima facie case and the contestees move to dismiss the case and rest, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery,

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, any issue in doubt as to discovery raised by the evidence must be resolved against the party having the risk of nonpersuasion, the mining claimant. If a mining claimant fails to show by a preponderance of the evidence as to such issue that there has been a discovery of a valuable mineral deposit he has not satisfied his burden of proof and an administrative law judge must declare the claim invalid, rather than leave the question of the claim's validity unresolved.

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other essential issues to determine whether the application may be allowed.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

The doctrine of res judicata will not bar an administrative proceeding to determine the validity of three unpatented mining claims where, in a previous condemnation action for the War Department's taking of a temporary exclusive easement covering the claims, the judgment of the Federal district court was limited solely to the compensation to be paid by the United States, and there was no litigation of the issue of the validity of the claims and no prior adjudication of that issue in the Department of the Interior.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimants concerning the validity of the claims with the intention that the claimants should act in reliance thereon, with the result that the claimants were thereby induced to do so, to their ultimate damage.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of three mining claims which were the subject of a previous condemnation action for the taking by the Government of a temporary exclusive easement over the claims, where the issue of the validity of the claims was not actually litigated and it was wholly unnecessary for the court to adjudicate that issue in rendering its judgment.

The Department of the Interior has jurisdiction, in proper proceedings, to determine the vaildity of mining claims on Federal lands.

United States v. A. B. Fleming et al., 20 IBLA 83 (Apr. 24, 1975)

The doctrine of collateral estoppel will not bar the administrative contest of the validity of five mining claims which, together with another claim, were the subject of previous condemnation actions for the taking of a temporary exclusive easement over the claims, where the issue of the validity of the individual claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance thereon, with the result that the claimant was thereby induced to do so, to his ultimate damage.

There can be no waiver of the Secretary's right to contest a mining claim believed to be invalid without a showing of an authority to make such a waiver and an intention to do so.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

Where a contestee makes a timely response to a Government complaint in a mining contest, which can reasonably be construed as a general denial of the allegations contained in the complaint, the response will be considered a sufficient answer within the contemplation of the regulations. The allegations then cannot be taken as admitted and the mining claim declared null and void without a hearing.

United States v. Cliff Libby, 24 IBLA 39 (Feb. 19, 1976)

A mining claim is a claim to property which may not be declared invalid without proper notice and an adequate opportunity for an agency hearing in accordance with due process of law. That due process consists of notice and opportunity for hearing, and it suffices if the claimant is afforded the opportunity to be present and heard. The fact that the claimant, after filing a timely answer to the contest complaint, refused to attend that hearing and produce evidence does not vitiate the due process he has received.

United States v. Carl Bellamy, 25 IBLA 50 (May 14, 1976)

Where the Government fails to present a prima facie case, a contestee, upon timely motion, may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record. Therefore, even if the Government has failed to make a satisfactory prima facie case, or the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderance of the evidence, bearing the risk of nonpersuasion if he fails.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

"Final entry." When an amended homestead final proof has been submitted, the term "final entry" in the proviso in sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, *as amended*, 43 U.S.C. § 1165 (1970) refers to the submission, to the proper officials, of the amended final proof and required fees.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, *as amended*, 43 U.S.C. § 1165 (1970) which requires issuance of a patent 2 years after receipt upon final proof for a homestead entry, a contest against an entry should not be dismissed where the complaint was filed within 2 years following the submission of additional affidavits amending the entryman's deficient final proof, despite the fact that the receipt in connection with the deficient proof had been issued more than 2

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

years before filing of the complaint and the receipt had never been canceled or a new receipt issued.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

Where the Government contests a mining claim, official notice of a change in the published price of gold from that given at the hearing, as set forth in the evidence, may be taken by both the administrative law judge and the Board of Land Appeals, but official notice cannot be given to asserted "modern methods of extraction of gold."

United States v. Gold Placers, Inc., 25 IBLA 368 (July 6, 1976)

A Federal district court jury verdict in a suit to cancel desert land patents, that the entrymen and their purchaser under an illegal executory contract did not commit fraud against the United States, does not collaterally estop this Department from adjudicating a contest grounded on the illegal executory contract against the purchaser's own entry, because the legal standard applicable in the subsequent contest is different than that in the fraud action--a desert land entry can be subject to cancellation for acts that do not constitute fraud.

In the case of a desert land entry contestee who violates the 320-acre limitation on holding desert land because he is the "purchaser" of two other 320-acre entries under an illegal executory contract to convey after patent, all entries held by the "purchaser" are subject to cancellation, and the Department may proceed by way of contest against the "purchaser's" own entry, which was not a subject of the illegal contract.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

Where the Bureau of Land Management determines that an Alaska Native allotment application should be rejected because the land was not used and occupied by the applicant, the BLM shall issue a contest complaint pursuant to 43 CFR 4.451 *et seq*. Upon receiving a timely answer to the complaint, which answer raises a disputed issue of material fact, the Bureau will forward the case file to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, for assignment of an administrative law judge, who will proceed to schedule a hearing at which the applicant may produce evidence to establish entitlement to his allotment.

Donald Peters, 26 IBLA 235 (Aug. 17, 1976)
83 I.D. 308

John Moore et al., 40 IBLA 321 (Apr. 30, 1979)
86 I.D. 279

Although, in a mining claim contest, the Government may make a prima facie case of no discovery by the testimony of a mineral examiner that he has been on the land in issue and saw nothing of mineral value, a prima facie case is ordinarily not made where it is established that the examiner was not on the land in issue.

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Co., Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the administrative law judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

United States v. Mins Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

Where the State of Alaska has applied to select certain land and has been given tentative approval of that selection, and thereafter a conflicting Native allotment application is filed which is supported only by meager evidence of use and occupancy, it is error to allow the allotment application and to cancel the State's tentative approval and reject the selection application without notice and an opportunity for a hearing in which the State may participate.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

In a mining contest, a matter not charged in the complaint may only be considered by the administrative law judge if it was raised at the hearing without objection and the contestee was fully aware that the issue was raised.

United States v. Glenn C. Bolinder and L. O. Turner, et al., 28 IBLA 187 (Dec. 6, 1976) 83 I.D. 609

The fact that the contest regulations may not contain a specific provision providing for the assertion of affirmative defenses or counterclaims in an answer to a contest complaint does not necessarily bar an administrative law judge from consideration of the substance of such assertions.

United States v. Jerry L. Crow, 28 IBLA 305 (Jan. 24, 1977)

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. A mining claim may be declared null and void where there was a charge in the complaint of insufficient minerals to constitute a valid discovery.

United States v. William C. Smith, a/k/a Bill Smith, 29 IBLA 7 (Feb. 8, 1977)

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. However, under the rules an answer may be accepted if it is received within 10 days after the due date and it is determined that the answer was probably transmitted before the end of the period in which it was required to be filed.

United States v. Jesse Smith, 29 IBLA 10 (Feb. 8, 1977)

When a mining claimant has failed to answer a complaint in a mining contest, the allegations are deemed admitted and the State Office of the Bureau of Land Management will decide the case without a hearing. 43 CFR 4.450-7(a).

A defaulting contestee may not rely on an answer filed by another contestee in the same contest when such answer never purported to be on behalf of the defaulting contestee.

United States v. Frederick A. Haas et al., 29 IBLA 120 (Feb. 23, 1977)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant, but if the Government in a contest fails to present a prima facie case and the contestee moves to dismiss the case and rests, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by contestee shows there has not been a discovery, it may be used in reaching a decision that the claim is invalid regardless of any defects in the prima facie case.

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Where the Government has made a prima facie case of lack of discovery in a mining contest, and a mining claimant fails to show discovery by a preponderance of the evidence, he has not satisfied his burden of proof and the claim must be declared invalid.

United States v. Lloyd O'Callaghan, Sr., et al., 29 IBLA 333 (Mar. 31, 1977)

Since a Government contest is not insufficient and subject to dismissal for failure to name all parties in interest, a contest is properly brought against persons who are heirs of a director of a corporation whose charter has expired under State law, even though the State law provides that the property of such a corporation passes to a public trustee for distribution by him. Any interest of those not named or served in a manner provided by the pertinent regulation is not affected.

United States v. Emma Elizabeth Conger, and Walter J. Boltz, as the Heirs of R. W. Speer, a Last Known Director of the Arlington Gold Mining Co. (Contestees), 31 IBLA 173 (July 5, 1977)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a proceeding to determine the validity of an unpatented mining claim the claimants must prevail, if at all, upon the strength of their own case, rather than upon any weakness in that of the Government.

United States v. E. K. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

A Bureau of Land Management decision, dismissing an answer to contest complaints filed in behalf of individual contestees and a company, and holding mining claims null and void because it appeared the company did not own the claims and because the answer was filed in behalf of the individual contestees by someone not authorized to practice in their behalf, will be vacated where on appeal it is shown that within the time for filing the answer the claims had been transferred to the company. There is no need to dismiss the contest and initiate a new contest against the company since a timely answer has been filed in its behalf; instead, the complaints should be amended to substitute the company as the contestee and party in interest and the contest proceeding should go forward against it.

Sharon R. Milazzo et al., 33 IBLA 57 (Dec. 5, 1977)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

In a Government contest, regular service of the complaint must be presumed, where no question is raised as to the validity of certified mail return receipts included in the record, regular on their face and indicating proper service.

United States v. Ronda Niece and Leslie Niece, 33 IBLA 290 (Jan. 10, 1978)

Although a millsite may be declared invalid when its only use is in connection with a mining claim which is declared invalid, a millsite can be contested separately and declared invalid when evidence establishes it is not being used for mining or milling purposes, independent of the issue of the validity of the mining claim.

United States v. John R. Parsons, 33 IBLA 326 (Jan. 16, 1978)

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

United States of America v. David L. King et al., 34 IBLA 15 (Feb. 10, 1978)

In a mining contest a contestee may rest at the close of the Government's case and move for a dismissal based on the Government's failure to make out a prima facie case of a claim's invalidity. If, however, the contestee goes forward and presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

Where the Bureau of Land Management brings a contest complaint against unpatented mining claims, naming as contestee only the estate of the deceased claimant, proper service of process upon the court appointed administrator, executor, or personal representative of the deceased claimant is necessary in order to affect the interests of all the heirs of the deceased.

Heirs of a deceased mining claimant who personally respond without protest or objection to a Government contest complaint which names as contestee only the estate of their intestate decedent will be bound by the result of such contest insofar as it purports to affect their interest in that estate, even though service on the estate itself was faulty.

United States v. Estate of W. B. Wood, 34 IBLA 44 (Feb. 16, 1978)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Unsubstantiated allegations of temporary incapacity due to a nervous breakdown cannot serve as a basis for waiving this mandatory requirement.

United States v. Brent J. Brunker, 36 IBLA 36 (June 27, 1978)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

Where, in a mining contest, a contestee presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to mineral claimant's lack of good faith must be clear.

United States v. Clayton A. Dillman and Jean P. Dillman, 36 IBLA 358 (Aug. 31, 1978)

Intervention, by right, as a full party in a contest proceeding is only recognized where the individual seeking intervention has the necessary interest to maintain a private contest independently under 43 CFR 4.450-1.

The extent of the participation in a contest hearing to be afforded "interested individuals" who do not have a sufficient interest to maintain a private contest is committed to the sound discretion of the administrative law judge. Among the factors which are properly considered are: the desires of the original parties; the likelihood that the party seeking intervention will provide information which would not be forthcoming without its participation; and the cost which must be borne by both the contestant and the contestee by the nature and scope of the intervention granted.

United States v. United States Pumice Co., 37 IBLA 153 (Oct. 5, 1978)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Where contestees deny the allegations in the complaint only as to 4 claims but not as to 15 other claims addressed in the complaint, the complaint will be taken as admitted as to the 15 claims not addressed in the answer to the complaint.

Where contestees in a mining claim contest file a timely answer to the contest complaint, this answer is efficacious as to any other contestees who are members of his family if it appears on the face of the answer that they wish to retain their interests, if any, in the claims, as the contestees who answered may be regarded as having done so on their family members' behalf. In these circumstances, these other contestees are properly regarded as having answered the complaint, absent any manifestation of a contrary intent.

Where a contestee makes a timely response to a Government complaint in a mining contest which is sufficient to raise a justiciable controversy, the allegations then cannot be taken as admitted and the mining claim(s) cannot be declared null and void without a hearing.

United States v. Jerry Brock et al., 39 IBLA 146 (Jan. 29, 1979)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Where Bureau of Land Management determines an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 *et seq*.

Frederick Phillips et al., 41 IBLA 169 (June 22, 1979)

Ella S. Sheldon et al., 42 IBLA 276 (Aug. 27, 1979)

Elena Bartman, 43 IBLA 284 (Oct. 17, 1979)

Where the Bureau of Land Management (BLM) determines that an Alaska Native allotment application should be rejected in part because the Native did not use all of the land applied for, the BLM shall initiate a contest proceeding pursuant to 43 CFR 4.451 *et seq*.

Frank Holland, 41 IBLA 207 (June 27, 1979) 86 I.D. 342

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing.

United States v. James Hawkeswood et al., 41 IBLA 245 (June 27, 1979)

United States v. Edna Horstmeier, 42 IBLA 33 (July 26, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska, 41 IBLA 309 (July 5, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska et al., 42 IBLA 94 (Aug. 16, 1979)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Where an applicant for a Native allotment alleges for the first time on appeal his use and occupancy of lands prior to their withdrawal, a decision rejecting the Native's application shall be vacated and the case remanded to BLM for its consideration of appellant's new evidence.

Charles L. John, 42 IBLA 260 (Aug. 27, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Alaska Mental Health Enabling Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the determination to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings. If, however, the Board affirms the finding that the requirements of patent have been met, the State will have no further administrative recourse. Where the State had not, prior to its appeal, been afforded notice of the election, it should be afforded an opportunity to make such election.

State of Alaska v. Mattie E. Barton, 42 IBLA 269 (Aug. 27, 1979)

State of Alaska v. Daniel Johnson, 42 IBLA 370 (Sept. 11, 1979) 86 I.D. 441

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case and then rest. The contest complaint could be dismissed if the administrative law judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

A sufficient prima facie case by the Government does not require positive proof that there has been no discovery made or that the mining claim is nonmineral in character. Upon the Government's presentation of a prima facie case, the burden shifts to the claimant to prove by a preponderance of the evidence that he indeed has a discovery of a valuable mineral deposit within the limits of the claim.

United States v. Andy Syndtad, 42 IBLA 313 (Aug. 29, 1979)

It is the responsibility of a mining claimant to present evidence supporting his allegation of bias on the part of Government mineral examiners testifying as to the validity of his claim in a contest proceeding, and a showing of Department affiliation does not discredit a witness.

The procedures of the Department of the Interior in mining contests where a mining claimant is afforded notice and an opportunity to be heard comport with the

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

requirements of due process under the United States Constitution.

United States v. J. D. Wilson, 44 IBLA 1 (Nov. 6, 1979)

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.450 - 4.452-9.

Amy Tukrook Nukapigak, 44 IBLA 313 (Dec. 31, 1979)

HEARINGS

Where the party bearing the risk of nonpersuasion does not appear at a hearing ordered pursuant to 43 CFR 4.415, that party's appeal is properly dismissed.

Stanley G. West, 18 IBLA 337 (Jan. 10, 1975)

While a mining contest is within the jurisdiction of an administrative law judge, he may reopen the hearing for the production of further evidence before he makes his decision.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

Evidence submitted on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

A further hearing in a mining contest may be ordered where the particular circumstances so warrant it.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

Where at a hearing held pursuant to sec. 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

An evidentiary hearing will be denied where the facts are not in issue and there is no chance of development of further facts not already of record upon which a decision may be predicated.

Ann McNoise, David Lee Osheim, Martha Anderson, 20 IBLA 169 (May 7, 1975)

James S. Picnalook, Sr., Mabel Bullard, 22 IBLA 191 (Oct. 15, 1975)

RULES OF PRACTICE--Continued

HEARINGS--Continued

In a hearing on a patent application filed under the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), the Government has the obligation of making a prima facie case of mineral character between the date the railroad line was definitely located and the date of purchase, whereupon the applicant has the burden of establishing nonmineral character by a preponderance of the evidence.

Southern Pacific Co., Heirs of George H. Wedekind, 20 IBLA 365 (June 12, 1975)

In a hearing held to determine whether lands were swamp and overflowed at the time of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), the parties asserting the State's title fail to meet their burden of proof when the evidence submitted indicates that the mangrove area claimed as swampland is in fact below the line of mean high tide, and was properly delineated from the upland by the meander line.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

A request for an evidentiary hearing will be denied where there is no dispute involving a material fact, and there is no chance of development of further material facts which would require a different decision.

Beulah Moses, 21 IBLA 157 (July 21, 1975)

Stanley E. McCormick, 23 IBLA 304 (Jan. 16, 1976)

An evidentiary hearing will be denied where the information supplied by the applicant shows, as a matter of law, that the requirements of the statute have not been met.

Harper Bergman, 21 IBLA 173 (July 25, 1975)

Applicants under the Alaska Native Allotment Act do not have a right to a formal hearing before an administrative law judge. However, a hearing may be ordered in the discretion of the Secretary of the Interior.

Elsie Bergman, Walter Titus, Steven Bergman, 22 IBLA 233 (Oct. 22, 1975)

An evidentiary hearing will be denied where there are no facts in dispute and only legal issues are involved.

Herman Nookahoon, 23 IBLA 54 (Dec. 4, 1975)

An applicant for a Native allotment has no right to a hearing, and none is required where there is no offer of proof which indicates that the findings of the State Office were incorrect, or where an offer of evidence is unaccompanied by a satisfactory explanation why it was not submitted to the State Office within the time provided.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

RULES OF PRACTICE--Continued

HEARINGS--Continued

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary with the Secretary of the Interior. However, where there does appear to be a dispute as to material facts raised by conflicting affidavits as to the alleged use of land by conflicting applicants, a further field investigation will be directed in an attempt to resolve the factual uncertainties.

Amelia K. Blastervold et al., 23 IBLA 207 (Jan. 6, 1976)

When the Department of the Interior finds that public land within the place limits of a legislative grant-in-aid of the construction of a railroad was mineral in character and the railroad company challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence.

Southern Pacific Transportation Co., Jay R. Fogal; Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976)
83 I.D. 1

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary with the Secretary of the Interior. A hearing is not appropriate when there is no offer of proof which if established would impel a different legal conclusion.

Kathryn Eluska, 23 IBLA 288 (Jan. 12, 1976)

An applicant for a Native allotment does not have a right to a formal hearing before an administrative law judge. Hearings may be held in the discretion of the Secretary of the Interior and will not be held where it is unlikely that further evidence will result in a different conclusion.

John C. Hanssen, 23 IBLA 296 (Jan. 12, 1976)

An evidentiary hearing is not required where a decision is based upon the facts as stated by the applicant, there is no dispute as to any material fact, and the sole question presented is a legal issue.

Rachael Toroskok, 23 IBLA 318 (Jan. 16, 1976)

Evidence offered on appeal from an initial decision by an administrative law judge after a hearing in a contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

A further hearing may be ordered in a mining contest where the record is unsatisfactorily confusing and conflicting on the issue of quantity of minerals to satisfy the discovery tests, a request for the rehearing has been made with an offer of proof which tends to show a new hearing might result in a different finding, and there has been no objection to the request.

United States v. George R. Edeline et al., 24 IBLA 34 (Feb. 17, 1976)

RULES OF PRACTICE--Continued

HEARINGS--Continued

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds et al., 25 IBLA 67 (June 1, 1976)
83 I.D. 275

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing pursuant to the Administrative Procedure Act are required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

David Loring Castle, Darrel Hogglum, 26 IBLA 249 (Aug. 18, 1976)

W. A. Todd, J. B. Johnson, 28 IBLA 160 (Dec. 1, 1976)

In a case where a substantial increase is proposed in charges for a communication site under 43 CFR 2802.1-7(e), the required hearing should be conducted in accordance with the accepted concepts of due process.

American Telephone and Telegraph Co. et al., 25 IBLA 341 (June 30, 1976)

The allowance of a request for a hearing before an administrative law judge in a protest against a survey by the Bureau of Land Management is within the discretion of the Board of Land Appeals. There is no right to such a hearing.

E. A. Mikelson, 26 IBLA 1 (July 6, 1976)

While a determination of the grazing capacity of public lands will not ordinarily be overturned in the absence of a clear showing of error, a hearing may be ordered to resolve conflicts in the opinions of different experts where the lessee has made a substantial and believable offer of proof which, if true, would show error in the Bureau of Land Management's determination.

Duke W. Evans et al., 26 IBLA 15 (July 7, 1976)

Where there are conflicting claimants to lots in a Native townsite and the record does not clearly reflect who occupied or who was entitled to occupancy of the lots on the date of final subdivisional survey, the Board may, on its own motion, order a hearing.

Leona B. Stiens, 26 IBLA 144 (Aug. 2, 1976)

RULES OF PRACTICE--Continued

HEARINGS--Continued

A second hearing will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he/she actually was represented at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

United States v. Beatrice Ann Johnson, 33 IBLA 121 (Dec. 19, 1977)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy B. Cummins, 26 IBLA 223 (Aug. 17, 1976)

A petition to reopen a hearing for submission of further evidence will be denied when the contestee offers no valid justification for the neglect to offer the evidence, which was or could have been available at the original hearing.

United States v. Don Hanson, 26 IBLA 300 (Aug. 27, 1976)

Under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7(a), an applicant has no right to a hearing in connection with original charges for use and occupancy of a communication site, and a hearing pursuant to a request under 43 CFR 4.415 will not be granted where applicant fails to make specific allegations or offer specific proof to show in what factors a Departmental appraisal is in error.

Mountain States Telephone and Telegraph Co., 26 IBLA 393 (Sept. 16, 1976) 83 I.D. 332

Rejection of a desert land entry application because the applicant has failed to supply satisfactory evidence of a right to the permanent use of sufficient water to irrigate and reclaim the irrigable portion of the entry will be set aside and the applicant's request for a hearing granted where there is conflicting evidence in the record concerning the sufficiency of the water supply and where the applicant has alleged facts which, if proved, would result in a different conclusion.

Dixie L. Bjornestad et al., 27 IBLA 201 (Oct. 6, 1976)

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the administrative law judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

The *dependent* resurvey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of the original survey and other recognized and acceptable points of control, and, second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. Where an appellant who protests a dependent resurvey presents evidence which questions whether, in fact, the Bureau of Land Management accurately located a quarter section corner and three certified surveyors agree with appellant, a hearing will be ordered for resolution of the factual issue of location of the quarter corner.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

Charles R. Nielsen, Pauline Nielsen, 30 IBLA 235 (May 26, 1977)

James Pessano, 35 IBLA 383 (June 23, 1978)

Evidence offered on appeal from an initial decision by an administrative law judge after a hearing in a contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

David A. Burns, 30 IBLA 359 (June 10, 1977)

Joe I. Sanchez and Celina V. Sanchez, et al., 42 IBLA 176 (Aug. 22, 1979)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Universal Resources Corp., et al., 31 IBLA 61 (June 23, 1977)

In a proceeding before the Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of

RULES OF PRACTICE--Continued

HEARINGS--Continued

record concerning the status of the land when the claim was located, no hearing is required.

David Budinski et al., 31 IBLA 139 (June 30, 1977)

Where an administrative law judge's decision contains a ruling, in a single sentence, on all of the proposed findings and conclusions submitted by a party to a hearing and the ruling on each finding and conclusion is clear, there is no requirement that the judge rule separately as to each of the proposed findings and conclusions.

United States v. Leslie Harling and William Harling, 32 IBLA 29 (Aug. 31, 1977)

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

Administrative hearings required in grazing trespass cases are not an unlawful exercise of judicial power and meet constitutional requirements and the standards of the Administrative Procedure Act. The constitutional requirement of due process is not violated merely because an administrative law judge is employed by the Department of the Interior.

Bureau of Land Management v. Ross Babcock, 32 IBLA 170 (Sept. 15, 1977) 84 I.D. 475

When the Department of the Interior finds that public land within the place limits of a grant to a railroad under the Act of July 1, 1862, as amended, was mineral in character and the railroad company, filing for patent on behalf of an alleged bona fide purchaser from it, challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence, and the bona fides of the purchaser.

Southern Pacific Transportation Co., 32 IBLA 218 (Sept. 19, 1977)

A request for a hearing will be denied where there is no dispute involving a material fact, and there is no chance of development of further material facts which would require a different decision.

Cabax Mills, 32 IBLA 225 (Sept. 20, 1977)

An applicant has no right to a hearing in connection with original Federal charges for use and occupancy of a communication site, and in the absence of any specific assertion showing error in the appraisal, the appraisal will be sustained on appeal if it is properly formulated.

KVZ Television, Inc., 33 IBLA 80 (Dec. 8, 1977)

A request for a hearing will be denied in the absence of an assertion of fact which, if proved true, would entitle appellant to the relief sought.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978) 85 I.D. 171

RULES OF PRACTICE--Continued

HEARINGS--Continued

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

The Federal Rules of Civil Procedure are not binding on administrative agencies.

United States v. Hilton Wichner, 35 IBLA 240 (May 30, 1978)

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970) and 43 U.S.C. § 898 (1970), in which case a hearing need not be ordered to determine whether a railroad's purchaser was an innocent purchaser for value.

Southern Pacific Transportation Co., Donald R. Lee, Charles Silley v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Harry H. Wilson, 35 IBLA 349 (June 15, 1978)

It requires a substantial showing of bias to disqualify a hearing officer in administrative proceedings or to justify a charge that the hearing was unfair.

United States v. Richard R. Kingdon and Edith E. Kingdon, 36 IBLA 11 (June 27, 1978)

Evidentiary submissions on appeal can be considered only for the limited purpose of determining whether a further hearing should be granted. The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

There is not a sufficient equitable basis for reopening a hearing in a mining contest because of an alleged fire to the contestee's home 3 days before the scheduled hearing where neither she nor her attorney who had entered an appearance in the case requested a postponement of the hearing or a continuation of the hearing after it had been held. Also, a further hearing will not be granted merely to afford a claimant an additional opportunity to explore and make a discovery of a valuable mineral deposit.

United States v. Florence J. Mattox, 36 IBLA 131 (July 31, 1978)

RULES OF PRACTICE--Continued

HEARINGS--Continued

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decisionmaker, that the decisionmaker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

Donald R. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

A second hearing will not be afforded generally where a claimant was given notice and an opportunity to appear at a hearing, where he did appear and was represented at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

Where there exist factual questions about the location of section and subdivisional corners in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

A second hearing will not be afforded where a mining claimant has submitted nothing which suggests that another hearing would produce a different result, i.e., a finding that a valuable mineral deposit has been discovered on a mining claim. Assertions that further mineral examination would prove the existence of such a deposit and that such a deposit exists on adjacent land, without more, do not entitle the claimant to another hearing.

United States v. Lost Polack Mining Ass'n, 38 IBLA 101 (Nov. 20, 1978)

Where production has ceased on an oil and gas lease extended by production, and the record is unclear whether the conditions prescribed by 30 U.S.C. § 226(f) (1976) precluding termination of the lease have occurred, the case will be remanded to the Bureau of Land Management to reconsider with the Geological Survey if the lease has terminated, including a determination whether the lessee began reworking or drilling operations within 60 days after cessation of production and diligently prosecuted such operations before attaining production as asserted by him on appeal. A hearing should be held, if necessary, to resolve disputed facts.

Fred H. Bolinder and Julienne J. Bolinder, 40 IBLA 164 (Apr. 3, 1979)

Where the Geological Survey, in making its decision, has reviewed the same information submitted on appeal to the Board of Land Appeals to show that there was a well capable of producing oil or gas in paying quantities on the date the lease expired, and there are no disputed facts, but only a dispute on the proper application of the law to those facts and legal interpretations, a hearing is not warranted in the case.

American Resources Management Corp., 40 IBLA 195 (Apr. 5, 1979)

RULES OF PRACTICE--Continued

HEARINGS--Continued

Alaska Natives who allege substantial use and occupancy of vacant, unappropriated, and unreserved public land in Alaska for a period of at least 5 years pursuant to the Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970), and the regulations at 43 CFR Subpart 2561 are entitled to notice and an opportunity for a hearing prior to rejection of their application. Such notice shall specify the reasons for the proposed rejection. Claimant shall have an opportunity to present evidence and testimony of favorable witnesses at a hearing before the trier of fact prior to a decision.

John Moore et al., 40 IBLA 321 (Apr. 30, 1979)
86 I.D. 279

When an Alaska Native allotment applicant alleges that there has been substantial use and occupancy of vacant, unappropriated, and unreserved public land in Alaska for a period of at least 5 years pursuant to 43 U.S.C. §§ 270-1 to 270-3 (1970) and 43 CFR Subpart 2561, and the Bureau of Land Management determines the application should be rejected because the land was not so used and occupied, the Native is entitled under contest procedures, 43 CFR 4.451, to notice and an opportunity for a hearing prior to rejection of his application.

Mary Bobby, 41 IBLA 44 (May 29, 1979)

Rita Murphy, Gene E. Seague, 42 IBLA 51 (July 31, 1979)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before the trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Frederick Phillips et al., 41 IBLA 169 (June 22, 1979)

Ella S. Sheldon et al., 42 IBLA 276 (Aug. 27, 1979)

Elena Bariman, 43 IBLA 204 (Oct. 17, 1979)

Where surface owners object to the amount of a bond, submitted to the Bureau of Land Management under sec. 9 of the Stock-Raising Homestead Act of Dec. 29, 1916, as amended, 43 U.S.C. § 299 (1970), as being inadequate in amount, request a hearing thereon, but fail to tender any evidence which would impel the conclusion that a hearing is likely to be productive and meaningful, the request for a hearing is properly denied.

Elmer Silvers et al., 42 IBLA 11 (July 25, 1979)

Two mining claims, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing. Such a result obtains despite reference to a location notice prior to the withdrawal where appellants do not make a showing of sufficient specific facts upon which to predicate a hearing, including which of the claims the previous location relates to, the boundaries thereof, whether the previous location was for a locatable mineral under a withdrawal order then in force, and the name of the previous locator.

The Heirs of R. E. Parkin, 42 IBLA 44 (July 31, 1979)

RULES OF PRACTICE--Continued

HEARINGS--Continued

The substantial use and occupancy required under the Native Allotment Act must be achieved by the Native himself as an independent citizen (or family head) and such use must be at least potentially exclusive of others. Although a minor may initiate such use and occupancy, use and occupancy by a dependent accompanied by his parents does not qualify.

Where a Native allotment application has been rejected, based on the guidelines of Oct. 18, 1973, on the basis that the applicant had not demonstrated 5 years use and occupancy of the land prior to the withdrawal affecting the land, and that requirement is abolished by Secretarial Order No. 3040, of May 25, 1979, the decision will be set aside and the case remanded for action.

Bella Boys, 42 IBLA 59 (Aug. 2, 1979)

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted.

A hearing will be afforded to a Native allotment applicant to show his/her entitlement to a Native allotment in view of court decisions requiring hearings on Native allotment applications. Where the applicant requests a hearing and alleges there are factual disputes concerning abandonment and nonuse of the claim, although the showings on the application show nonuse of the land for a lengthy period of time sufficient ordinarily to constitute a prima facie case for rejection of the application, a hearing is nevertheless mandated.

Mildred Sparks, 42 IBLA 155 (Aug. 19, 1979)

A hearing is properly ordered where there exist issues of fact the resolution of which will determine whether an oil and gas lease concluding its primary term was converted from rental status to royalty status. Appellant shall have the burden of proof to establish by a preponderance of the evidence (a) that the Federal-Government #1 well was capable of producing oil and gas in paying quantities on Oct. 31, 1978, or (b) that there was a discovery of oil or gas in paying quantities on lease # 15891 on Oct. 31, 1978. If either (or both) of these propositions is established, the subject lease was not subject to automatic termination by law for failure to make timely rental payment.

Coronado Oil Co., 42 IBLA 235 (Aug. 22, 1979)

A second hearing will not be afforded where a mining claimant had notice of and appeared at the first hearing and no evidence has been submitted suggesting another hearing would produce a different result.

United States v. Howard D. Long, Dolores M. Phillips, 43 IBLA 150 (Sept. 28, 1979)

A continuance of a hearing into the validity of a mining claim will only be granted where the mining claimant presents sufficient reason to justify the grant of an additional opportunity to present his case, i.e., where circumstances have placed a substantial constraint upon his ability to obtain or offer samples or other evidence of a discovery. Furthermore, it must

appear that the claimant is not using the additional time to make the requisite discovery.

United States v. Elbert Gassaway, 43 IBLA 382 (Oct. 31, 1979)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Dorothy Smith, Keith C. Hayes, 44 IBLA 25 (Nov. 6, 1979)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject the application for allotment.

Amy Inkrook Nuharigak, 44 IBLA 313 (Dec. 31, 1979)

PRIVATE CONTESTS

A private contest brought against an Alaskan homestead entry charging that the entryman failed to meet the minimum cultivation requirements for the second entry year must be dismissed when it is disclosed that such information was of record in the Bureau of Land Management office at the time the complaint was filed.

Olaf W. Christie v. Larry E. O'Slester, 23 IBLA 155 (Dec. 23, 1975)

Where, pursuant to 43 U.S.C. § 315g (1970), a State has acquired land subject to a reservation of minerals to the United States, and the State thereafter leases the surface of the land to a corporation for purposes which are plainly incompatible with mining, the surface lessee has standing to initiate a private contest to determine the validity of unpatented mining claims located on the land. It is not essential to the cause of action that there be an actual physical interference by one party with the other party's use of the land if their respective interests are clearly and potentially conflicting.

Continental Oil Co. v. Aztec Exploration and Development Co., 32 IBLA 1 (Aug. 24, 1977)

A private contest complaint which does not set out in clear and concise language a statement of the facts constituting the grounds of contest is properly dismissed.

Eugene A. Whitsell, 34 IBLA 121 (Mar. 2, 1978)

Where the only properly corroborated fact alleged by private contestant related to situs of contestee's residence in 1975 and thereafter, but precomplaint record included assertion by contestee that he lived on homestead in 1972, 1973, and 1974, the contestant has not thereby alleged facts which, if proved, would require cancellation of entry, and contest must be dismissed under 43 CFR 4.450-5(a).

Although in his summary dismissal of private contest against homestead entry administrative law judge discussed issues upon which contestant had failed to submit corroborated allegations of fact along with his complaint, such action by judge did not relieve contestant of his burden of filing corroboration, despite provisions of 43 CFR 4.450-4(b) allowing judge to "raise issues in connection with deciding a contest."

Administrative law judge properly dismissed without a hearing a private homestead entry contest in which complaint failed to allege corroborated facts which, if proved, would provide sufficient basis for cancellation of entry.

Where contestant in private homestead entry contest appeals to Board of Land Appeals and makes certain assignments of error by administrative law judge, but allegations of fact upon which those assignments are based were not corroborated at filing of contest complaint, and issues raised by those assignments were not raised in complaint, such assignments are not material for purposes of appeal to the Board.

Ernest C. Lamb v. Richard A. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

Intervention, by right, as a full party in a contest proceeding is only recognized where the individual seeking intervention has the necessary interest to maintain a private contest independently under 43 CFR 4.450-1.

The extent of the participation in a contest hearing to be afforded "interested individuals" who do not have a sufficient interest to maintain a private contest is committed to the sound discretion of the administrative law judge. Among the factors which are properly considered are: the desires of the original parties; the likelihood that the party seeking intervention will provide information which would not be forthcoming without its participation; and the cost which must be borne by both the contestant and the contestee by the nature and scope of the intervention granted.

United States v. United States Pumice Co., 37 IBLA 153 (Oct. 5, 1978)

Regulation 43 CFR 4.450-1 gives a person with an adverse interest in land a right to contest an adverse claim. The Department of the Interior has consistently recognized States as included within the term "person" within the meaning of the regulation, allowing them to initiate private contests.

Where the State of Alaska has shown an interest in land in its existing airport, it may bring a private contest to challenge Native allotment applications for land in conflict with the airport.

State of Alaska, 40 IBLA 79 (Mar. 22, 1979)

The State of Alaska will be afforded time within which to bring private contests against Native allotment applications conflicting with an existing airport runway built by the State and to show it has standing to contest. If it does so timely, the Bureau of Land Management will adjudicate its standing as a contestant and the contests will proceed if it finds affirmatively. If not, the State's timely objections will be taken as a protest and a factfinding hearing will be held. If the State fails to take timely action, a decision rejecting its application to reinstate a conflicting airport lease application will stand.

State of Alaska, 40 IBLA 118 (Mar. 27, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska, 41 IBLA 309 (July 5, 1979)

Under the "functional" standard to determine administrative standing set forth in Koniag, Inc. v. Andrus, 580 F.2d 601 (D.C. Cir. 1978), cert. denied, 99 S. Ct. 733 (1979), the State of Alaska has standing to challenge Native allotment applications conflicting with its selection applications even if the land is within a Native village selection area under the Alaska Native Claims Settlement Act. The State has standing under Departmental regulations to initiate private contests against such conflicting Native allotment applications.

"Person." A State is a "person" within the meaning of the Department's private contest regulations.

State of Alaska et al., 41 IBLA 315 (July 11, 1979)
86 I.D. 361

"Person." Regulation 43 CFR 4.450-1 specifically gives persons with an adverse interest in land a right to contest the adverse claim. It does not depend on the applicability of the due process clause of the Constitution to either claimant. A State is a "person" within the meaning of this private contest regulation.

The State of Alaska has a sufficient interest in land by virtue of its applications for an airport conveyance or by its selection application to have standing to initiate private contests against conflicting Native allotment applications.

State of Alaska, 42 IBLA 1 (July 25, 1979)

The owner of a patented stock-raising homestead, in which the minerals have been reserved to the United States under the Act of Dec. 29, 1916, as amended, has a sufficient adverse interest under 43 CFR 4.450-1, to

RULES OF PRACTICE--Continued

PRIVATE CONTESTS--Continued

initiate a contest against a mining claimant, alleging lack of discovery of valuable minerals.

The issue of whether a mining claim has been perfected by discovery of available mineral has no place in a proceeding to determine whether the amount of a stock-raising homestead bond is sufficient.

Elmer Silvera et al., 42 IBLA 11 (July 25, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska et al., 42 IBLA 94 (Aug. 16, 1979)

Where there is a conflict between an application by the State of Alaska to select land under the Alaska Mental Health Enabling Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the determination to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings. If, however, the Board affirms the finding that the requirements of patent have been met, the State will have no further administrative recourse. Where the State had not, prior to its appeal, been afforded notice of the election, it should be afforded an opportunity to make such election.

State of Alaska v. Mattie E. Dalton, 42 IBLA 269 (Aug. 27, 1979)

State of Alaska v. Daniel Johnson, 42 IBLA 370 (Sept. 11, 1979) 86 I.D. 441

A private contest brought against an Alaska homestead charging that the entryman had failed to meet any of the residence or cultivation requirements of the law must be dismissed where the statutory life of the entry has previously expired without the entryman filing final proof and information was already of record in the BLM office that the entryman had done nothing during the life of the entry to perfect the claim. 43 CFR 4.450-1.

Joe G. Ashcraft, 43 IBLA 178 (Sept. 28, 1979)

RULES OF PRACTICE--Continued

PROTESTS

The assignor of an oil and gas lease is not barred from protesting against a decision approving the assignment because of his failure to appeal from an earlier decision denying the assignee's request for assignment approval but stating that approval would be permitted upon performance of certain conditions.

When an assignment of an oil and gas lease, made prior to lease renewal, has been approved after renewal and thereafter it appears that there is a controversy whether the parties contemplated that the assignment of the base lease would extend to the renewal lease, the Department will not take action on a protest requesting rescission of the assignment approval, but will maintain the status quo for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

Joseph Alstad, 19 IBLA 104 (Mar. 4, 1975)

Where there is a private dispute as to the validity or effect of an oil and gas lease assignment, the Bureau of Land Management will not take action on a request for assignment approval, but will maintain the status quo for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

James V. O'Hare, R. Kenneth Willhollen, 19 IBLA 171 (Mar. 18, 1975)

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George B. Craig, Richard L. Craig, 19 IBLA 208 (Mar. 21, 1975)

The Board of Land Appeals may entertain and, where appropriate, grant a motion by the Bureau of Land Management to remand a case to it for further consideration on the question of whether an environmental impact statement must be filed, even though an appellant, who has protested against a negative declaration that no impact statement is required, objects to the remand.

Harold Gillis, 24 IBLA 248 (Mar. 25, 1976)

It is improper to dismiss a protest against issuance of an oil and gas lease applied for pursuant to the Act of May 21, 1930, 30 U.S.C. § 301 *et seq.* (1970), for lands underlying a railroad right-of-way granted under the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented without a reservation for minerals. In such case, title to the mineral estate underlying the right-of-way is no longer held by the United States and, therefore, a lease issued pursuant to the 1930 Act is void and must be canceled.

Amerada Hess Corp., 24 IBLA 360 (Apr. 23, 1976) 83 I.D. 194

RULES OF PRACTICE--Continued

PROTESTS--Continued

The thrust of 43 CFR 4.410, which limits the right to appeal to those who are parties to a case, is not to restrict access to administrative review of actions of Bureau of Land Management officials, but to provide a logical framework within which such review might be exercised. An "appeal" by an individual or group which has not, prior to the "appeal," participated in the formulation of the action to which objection is being voiced, should be treated as a protest under the provisions of 43 CFR 4.450-2.

The filing of a written protest ordinarily stays the action being protested until such time as a decision on the protest is issued and, under 43 CFR 4.21, the time in which a person adversely affected may file a notice of appeal therefrom.

California Ass'n of Four Wheel Drive Clubs et al., 30 IBLA 383 (June 10, 1977)

Where a protest has been made against the validity of a drawing entry card (DEC) in the simultaneous oil and gas lease filing procedure, it is improper to issue a lease in response to the protested DEC before the protest is finally dismissed. The Board of Land Appeals, rather than a BLM State Office, has the authority to make final administrative determinations for the Department in matters relating to protests against oil and gas lease offers.

D. E. Pack, 31 IBLA 283 (July 22, 1977)

Service by registered or certified mail may be proved by a Post Office return receipt showing that the document was delivered to the person's record address. The receipt need not be signed necessarily by the person to whom the mail was addressed.

The burden is on a protestant to show, as justification for the disqualification of the successful drawee in a simultaneous filing drawing procedure, that the offer is in fact defective. A suggestion of the possibility of violation of a regulation is not sufficient; a protestant must present competent proof of such violation. Absent an adequate showing of disqualification, a protest alleging disqualification is properly rejected.

Lillian Sweet, 37 IBLA 25 (Sept. 14, 1978)

In a competitive materials sale, submission of the required 10 percent deposit in cash with the sealed bid is permissible under the regulations and not a ground for rejection of the highest bid. Therefore, a protest against acceptance of the bid for that reason is properly denied.

Roy Blake, 38 IBLA 151 (Dec. 5, 1978)

A group of individual landowners, whose lands assertedly abut a Federal tract which is offered for timber sale, have standing to appeal from a decision dismissing their protest against the proposed sale.

George Jalbert et al., 39 IBLA 205 (Feb. 2, 1979)

The characterization of a submission as an "appeal" or as a "protest" is not binding upon a State Office; rather, reference must be made to the nature of the submission to determine whether the submission is properly treated as an "appeal" *or* as a "protest."

Duncan Miller (On Reconsideration), 39 IBLA 312 (Feb. 23, 1979)

The State of Alaska will be afforded time within which to bring private contests against Native allotment applications conflicting with an existing airport runway built by the State and to show it has standing to contest. If it does so timely, the Bureau of Land Management will adjudicate its standing as a contestant and the contests will proceed if it finds affirmatively. If not, the State's timely objections will be taken as a protest and a factfinding hearing will be held. If the State fails to take timely action, a decision rejecting its application to reinstate a conflicting airport lease application will stand.

State of Alaska, 40 IBLA 118 (Mar. 27, 1979)

The right of appeal to the Board is limited to parties to a case adversely affected by a decision of BLM. A person protesting a timber sale does not become a party to a case until such time as BLM has issued a final decision adverse to his or her interests. The case is ordinarily ripe for appeal only when an adverse decision is made on the protest.

The receipt of timber sale bids by BLM pursuant to an advertised sale and subsequent to the filing of a protest of the sale, does not constitute an irrevocable commitment to complete the sale where all bidders acknowledge that the final decision to award the sale contract is contingent upon adjudication of the protest and the decision reached on any proper appeal therefrom. Hence, receipt of bids by BLM does not prejudice the rights of protestants to have their protest ruled upon and any proper appeal heard.

Elaine Mikels et al., 41 IBLA 305 (July 3, 1979)

A bond filed by a mining claim owner, covering lands patented under the Stock-Raising Homestead Act of Dec. 29, 1916, *as amended*, 43 U.S.C. §§ 291-301 (1970), need only be set in an amount to cover damages to crops, improvements, and the value of the land for grazing purposes within the limits of the mining claim. The *ad damnum* of the bond does not have to be sufficient to cover damages caused by a disruption of the surface owner's entire grazing operation.

Elmer Silvers et al., 42 IBLA 11 (July 25, 1979)

Where a protest, with accompanying supporting evidence, alleges that the oil and gas lease offer drawn first in a simultaneous filing-drawing procedure violated the regulations because a party in interest was not disclosed and there was a multiple filing, the Bureau of Land Management should first afford the drawee an opportunity to respond to the protest before rejecting the offer based on facts alleged in the protest. The error, however, is rendered harmless where on appeal the offeror has full opportunity to make factual submissions and respond to the allegations.

H. J. Enevoldsen, 44 IBLA 70 (Nov. 20, 1979)
86 I.D. 643

RULES OF PRACTICE--Continued

PROTESTS--Continued

The filing of a timely protest suspends the authority of the State Office to act upon the matter until the protest has been ruled upon. Further, action is to be additionally suspended after a ruling on the protest for the period of time in which a person adversely affected may file a notice of appeal therefrom.

Where, on appeal from the denial of a protest to the issuance of a right-of-way, an appellant does not show that issuance of the right-of-way was contrary to the law or applicable regulations, a decision rejecting the protest will be affirmed.

James W. Smith, 44 IBLA 275 (Dec. 26, 1979)

SUPERVISORY AUTHORITY OF THE SECRETARY

A motion to dismiss an appeal is granted when the appellant had failed to file an appeal within 30 days of the date on which the contracting officer's final decision was received. Respecting the contractor's argument that the 30-day time limit should be waived the Board noted that the right to extend the time for filing a notice of appeal had been specifically excepted from the grant of authority to the Board as set forth in the regulations governing Board proceedings.

Appeal of Harry Claterbos Co., JV, IBCA-1153-5-77
(Dec. 6, 1977) 84 I.D. 969

Where the Secretary has declined to exercise his jurisdiction, a decision rendered by this Board is final for the Department. Hence, statements by BLM and arguments of the Solicitor, while valuable to the Board, are not binding upon the Board.

H. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

WITNESSES

A motion for remand of a mining claim contest for further hearing on the grounds of prejudicial surprise, based upon Government counsel's failure to supplement interrogatory answers listing witnesses and exhibits as ordered in lieu of prehearing conference, will be denied where contestee's counsel ignored repeated offers of continuance made at various stages of the hearing.

United States v. Theresa B. Robinson, 21 IBLA 363
(Aug. 25, 1975) 82 I.D. 414

A claim for acceleration under a contract for the construction of footings for a transmission line is denied where one of appellant's principal contentions was that in a telephone conversation following record snow in late September the project engineer had directed that men and equipment be added to the job in order to finish the work by the contract completion date of Nov. 1, but in correspondence conducted with the Government for almost 6 months after such telephone conversation the contractor failed to refer to the directions purportedly received from the project engineer and even failed to reference the particular telephone conversation. Actions taken by the Government's principal inspector were also found not to constitute acceleration orders when the evidence clearly showed that both parties viewed the inspector's action as involving suggestions rather than directions and that whether the suggestions were accepted by the contractor's job superintendent depended upon the exercise of his business judgment.

Appeal of Iversen Construction Co. (a/k/a Iconco),
IBCA-981-1-73 (Dec. 30, 1975) 82 I.D. 646

RULES OF PRACTICE--Continued

WITNESSES--Continued

Where the testimony and conclusions of an expert witness are based on careful examination of a mining claim by appropriate scientific methods, they will be accepted into evidence and given appropriate weight regardless of the fact that the witness may not be registered within that particular State as an expert in his field.

Cabot Sedgwick et al. v. O. M. Parker, 27 IBLA 256
(Oct. 20, 1976)

The Government failed to show that a rejected wall did not conform to the plans and specifications.

Appeal of Rocky Mountain Construction Co., IBCA-1091-12-75 (Aug. 17, 1977) 84 I.D. 829

Where a contestee fails to follow up his initial suggestion at the hearing that a deposition of a possible witness be taken with a proper request, it is not error for the administrative law judge to decide the case on the record made at the hearing.

United States (Contestant) v. Earl Frisco and Sandra S. Young (Contestees), 32 IBLA 248 (Sept. 21, 1977)

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

SCHOOL LANDS

GENERALLY

When title to an entire in-place school section has passed to the State, the United States no longer has a property interest therein and the land is no longer subject to location under the mining laws.

J. E. Binds et al., 25 IBLA 67 (June 1, 1976)
83 I.D. 275

An application for patent to school lands in place, pursuant to 43 U.S.C. § 871a (1970), which requests an exclusion of the right-of-way granted under the Act of July 1, 1862, *as amended* July 2, 1864, must be rejected. Such a patent must be issued "subject to" the right-of-way.

State of Wyoming, 27 IBLA 137 (Sept. 29, 1976)
83 I.D. 364

A State is entitled to indemnity for school lands which it did not acquire by reason of a fractional township. Where the fractional township is created by reason of the incursion of a navigable body of water, the State, by taking indemnity does not thereby grant to the United States the bed of the navigable body of water.

Leonard B. McSweyn, 28 IBLA 100 (Nov. 15, 1976)
83 I.D. 556

SCHOOL LANDS--Continued

GENERALLY--Continued

The acceptance by a State of other lands as indemnity for lands lying within the meander line of a nonnavigable lake adjacent to the granted upland school section, was a relinquishment of any interest in the adjacent land underlying the lake as an incident to the grant of the school section to the extent such land lies within the linear boundaries of the school section, and precludes the assertion of a State claim to such lands.

State of Montana, 28 IBLA 124 (Nov. 16, 1976)

GRANTS OF LAND

Title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, and the State shall succeed to the position of the United States as lessor under such lease.

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

INDEMNITY SELECTIONS

An application by a State for an indemnity school and land selection is not subject to rejection for the sole reason that the base lands are less valuable than the selected lands.

When a State files an indemnity school land application and selects lands withdrawn for leasable minerals and it is determined that disposal of such lands would unreasonably interfere with operations under the mineral leasing laws, such application may be rejected. However, when the State offers to waive the reserved leasable minerals and to allow reasonable surface entry for development and removal of the minerals, the application should be reevaluated in light of such offer.

State of New Mexico, 24 IBLA 135 (Mar. 8, 1976)

A railroad right-of-way, granted under the Act of July 1, 1862, 12 Stat. 489, *as amended* by Act of July 2, 1864, 13 Stat. 356, crossing a school section, does not constitute lands "otherwise disposed of by the United States" within the ambit of the school indemnity statutes. Therefore a rejection of an indemnity selection application, offering such base, is proper.

State of Wyoming, 27 IBLA 137 (Sept. 29, 1976)
83 I.D. 364

A State is entitled to indemnity for school lands which it did not acquire by reason of a fractional township. Where the fractional township is created by reason of the incursion of a navigable body of water, the State, by taking indemnity does not thereby grant to the United States the bed of the navigable body of water.

Leonard R. McSwegn, 28 IBLA 100 (Nov. 15, 1976)
83 I.D. 556

Under 43 U.S.C. § 852(a)(1) (1970), *as amended* by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

Per sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these rights be given to the State by deleting the reservation thereof in the clear list.

Where the record indicates that there may be gross disparity between the value of lands selected by a State as indemnity for lost school lands and the value of base lands submitted by the State in support of the selection, the matter will be remanded to the BLM for revaluation of the lands. If the revaluation reveals a gross disparity, the BLM shall withhold further action until judicial resolution of the propriety of the "grossly disparate value" policy.

State of California, 33 IBLA 160 (Dec. 20, 1977)

MINERAL LANDS

Title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, and the State shall succeed to the position of the United States as lessor under such lease.

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

Where, after statehood, a designated school section is surveyed and returned as mineral land (coal) known to be mineral in character prior to the date when the rights of the State would have attached, and where prior to the Act of Jan. 25, 1927 (44 Stat. 1026), the land is withdrawn for national forest purposes, title to the section did not pass to the State.

Malcolm E. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

Under 43 U.S.C. § 852(a)(1) (1970), *as amended* by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

Per sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which

SCHOOL LANDS--Continued

MINERAL LANDS--Continued

also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these rights be given to the State by deleting the reservation thereof in the clear list.

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State of California, 33 IBLA 160 (Dec. 20, 1977)

SCRIP

(*See also* Soldiers' Additional Homesteads--if included in this Index.)

GENERALLY

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

PAYMENT IN SATISFACTION

Transfers of scrip or selection rights which are presented to the Department of the Interior for recordation pursuant to the Scrip Recordation Act more than 6 months after they were made cannot be accepted for recording or serve as a basis for the acquisition of lands. An application to elect to receive cash rather than land, which is based upon a transfer of a soldier's additional homestead selection right filed more than 6 months after it was made, must be rejected.

Where an applicant to receive cash in satisfaction of a soldier's additional homestead selection right fails to establish a complete chain of title from the soldier-entryman to the applicant, a purported assignment of the right to the applicant cannot be recognized and the application must be rejected.

Margaret M. Chivers, 21 IBLA 124 (July 14, 1975)

The right to locate Sioux Half-Breed scrip is a personal right not subject to transfer. However, such scrip may be located by an attorney in fact with authority from the scripee (1) to locate the land in the name of the scripee, and (2) to convey that land in the name of the scripee. Where proper documentation of this authority from the scripee is not presented to the Department with an application to receive cash payment

SCRIP--Continued

PAYMENT IN SATISFACTION--Continued

for redemption of the scrip under the Act of Aug. 31, 1964, the application is properly rejected.

Preston Nutter Corp., 25 IBLA 234 (June 21, 1976)

RECORDATION

Transfers of scrip or selection rights which are presented to the Department of the Interior for recordation pursuant to the Scrip Recordation Act more than 6 months after they were made cannot be accepted for recording or serve as a basis for the acquisition of lands. An application to elect to receive cash rather than land, which is based upon a transfer of a soldier's additional homestead selection right filed more than 6 months after it was made, must be rejected.

Margaret M. Chivers, 21 IBLA 124 (July 14, 1975)

A forest lieu selection right is extinguished when the base lands are reconveyed by the United States to the principal (the party who originally conveyed the land to the United States). The purported agent or attorney-in-fact of the principal has no rights thereafter against the United States even if he recorded his power of attorney and other selection documents prior to the reconveyance.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

The requirement of the Act of Aug. 5, 1955, 69 Stat. 535, that within 6 months of any transfer of scrip rights the holding or claim of right must be presented for recordation by the Department, presupposes a valid transfer. Where the holder of a soldier's additional homestead right shows that the transfer was fraudulent and without his knowledge, the failure of the fraudulent transferee to record the right will not extinguish the right claimed by the innocent holder.

George Dodds, Jr., 27 IBLA 186 (Oct. 4, 1976)

SPECIAL TYPES OF SCRIP

An application for satisfaction of forest lieu selection rights filed after Dec. 31, 1969, will be rejected, as all such claims which had not been satisfied on that date, or for which no satisfaction had been demanded, expired by operation of law.

A forest lieu selection right is extinguished when the base lands are reconveyed by the United States to the principal (the party who originally conveyed the land to the United States). The purported agent or attorney-in-fact of the principal has no rights thereafter against the United States even if he recorded his power of attorney and other selection documents prior to the reconveyance.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

The right to locate Sioux Half-Breed scrip is a personal right not subject to transfer. However, such scrip may be located by an attorney in fact with authority from the scripee (1) to locate the land in the name of the scripee, and (2) to convey that land in the name of the scripee. Where proper documentation of this authority from the scripee is not presented to the Department with an application to receive cash payment for redemption of the scrip under the Act of Aug. 31, 1964, the application is properly rejected.

Preston Nutter Corp., 25 IBLA 234 (June 21, 1976)

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

VALIDITY

Where an applicant to receive cash in satisfaction of a soldier's additional homestead selection right fails to establish a complete chain of title from the soldier-entryman to the applicant, a purported assignment of the right to the applicant cannot be recognized and the application must be rejected.

Margaret W. Chivers, 21 IBLA 124 (July 14, 1975)

An application for satisfaction of forest lieu selection rights filed after Dec. 31, 1969, will be rejected, as all such claims which had not been satisfied on that date, or for which no satisfaction had been demanded, expired by operation of law.

A forest lieu selection right is extinguished when the base lands are reconveyed by the United States to the principal (the party who originally conveyed the land to the United States). The purported agent or attorney-in-fact of the principal has no rights thereafter against the United States even if he recorded his power of attorney and other selection documents prior to the reconveyance.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

The right to locate Sioux Half-Breed scrip is a personal right not subject to transfer. However, such scrip may be located by an attorney in fact with authority from the scripee (1) to locate the land in the name of the scripee, and (2) to convey that land in the name of the scripee. Where proper documentation of this authority from the scripee is not presented to the Department with an application to receive cash payment for redemption of the scrip under the Act of Aug. 31, 1964, the application is properly rejected.

Preston Nutter Corp., 25 IBLA 234 (June 21, 1976)

While the Department of the Interior does not rigidly apply the doctrine of administrative finality so as to bar any subsequent reassertion of soldier's additional homestead scrip rights which have been determined to be invalid, it is incumbent upon an applicant seeking to exercise such rights to submit compelling legal or equitable reasons for reconsideration.

The requirement of the Act of Aug. 5, 1955, 69 Stat. 535, that within 6 months of any transfer of scrip rights the holding or claim of right must be presented for recordation by the Department, presupposes a valid transfer. Where the holder of a soldier's additional homestead right shows that the transfer was fraudulent and without his knowledge, the failure of the fraudulent transferee to record the right will not extinguish the right claimed by the innocent holder.

Upon the death of a soldier-entryman the soldier's additional homestead right vests in his estate, subject to the right of his widow or minor orphan children to appropriate it pursuant to the terms of the statutory grant. Upon the death of the soldier-entryman's widow, and in the absence of minor orphan children, the right becomes absolute in the heirs of the soldier-entryman at the time of his death.

Where an applicant seeks to assert a soldier's additional homestead right which has been determined to be invalid in an earlier proceeding, and does not submit compelling legal or equitable reasons for reconsideration, but merely seeks to reargue the previous determination, the attempted exercise of soldier's additional homestead rights will be rejected.

George Bodda, Jr., 27 IBLA 186 (Oct. 4, 1976)

An application by a remote assignee to exercise soldiers' additional homestead rights is properly rejected when the validity of the right on which the assignment is based has not been established.

George Bodda, Jr., 37 IBLA 189 (Oct. 11, 1978)

SECRETARY OF THE INTERIOR

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands require extension or correction of past surveys.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved.

Richard E. and Shirley A. Jarrett, 19 IBLA 78 (Feb. 27, 1975)

H. E. Webb, 34 IBLA 362 (May 1, 1978)

A Departmental regulation promulgated pursuant to and comporting with statutory authority has the force and effect of law. One who exercises the delegated authority of the Secretary may not disregard the plain and unambiguous provisions of a mandatory regulation so as to impose a more onerous requirement on an applicant than is prescribed by the regulation in effect.

Arizona Public Service Co., 20 IBLA 120 (Apr. 25, 1975)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys.

Chester H. Ferguson et al., 20 IBLA 224 (May 13, 1975)

R. A. Mikelson, 26 IBLA 1 (July 6, 1976)

SECRETARY OF THE INTERIOR--Continued

A regulation defining "eligible refiners" under the Act of July 13, 1946, providing for the sale of Government royalty oil or gas, as owners of existing refineries (including refineries not in operation) who qualify as a small business enterprise under the rules of the Small Business Administration and who are unable to purchase in the open market an adequate supply of crude oil to meet the needs of their existing refinery capacities, is an implementation of the Act within the ambit of the Secretary of the Interior's authority to prescribe rules and regulations.

Thunderbird Resources, Inc., 20 IBLA 248 (May 16, 1975)

Where a Native allotment applicant has used the land applied for only for hunting, trapping and fishing and there are no improvements on the land, it is proper in the exercise of the Secretary's discretionary authority to reject the application to the extent it conflicts with a special land use permit issued to the Alaska Fish and Game Department for scientific purposes.

Gregory Anelon, Sr., 21 IBLA 230 (Aug. 1, 1975)

Before relief may be granted to the lessee of a terminated oil and gas lease, he must comply with the prerequisites set forth in 30 U.S.C. § 188 (1970). The Secretary has no authority to waive such statutory prerequisites.

C. J. Iverson, 21 IBLA 312 (Aug. 14, 1975) 82 I.D. 386

The execution of special stipulations as a condition precedent to issuance of oil and gas leases for land located in a national forest may be required at the discretion of the Secretary of the Interior in order to protect environmental and other land use values. The need for the stipulation should be clear and the stipulation should be a reasonable means to the intended purpose. The Forest Service's recommended stipulations will be carefully considered by the Department, but the final authority for oil and gas leasing on public domain land rests in this Department.

Earl R. Wilson, 21 IBLA 392 (Aug. 27, 1975)

The execution of special stipulations as a condition precedent to the issuance of oil and gas lease for land located in national forests may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

Bill J. Maddox, 22 IBLA 97 (Sept. 22, 1975)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect identifiable resource values as a condition precedent to issuance of an oil and gas lease. Stipulations proposed by the Forest Service will be carefully considered by this Department, but the final decision for oil and gas leasing on public domain land rests with this Department. A "no surface occupancy" stipulation proposed in order to protect a recreation area cannot stand if it might preclude surface occupancy unreasonably beyond the boundaries of the recreation area.

Beverley Lasrich, 22 IBLA 202 (Oct. 15, 1975)

SECRETARY OF THE INTERIOR--Continued

The Secretarial instruction of Oct. 18, 1973, which mandates a showing by a Native allotment applicant of 5 years of occupancy prior to a withdrawal of the land, was not required to be published as rulemaking since 5 U.S.C. § 553(a)(2) (1970) exempts from its ambit matters pertaining to public property.

Heirs of Dorothy Gordon, 22 IBLA 213 (Oct. 15, 1975)

The Secretarial guideline of Oct. 18, 1973, that a Native allotment application should be rejected when the applicant fails to show 5 years of use and occupancy prior to a withdrawal of the land: (a) is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970); and (b) is a proper exercise of the discretion vested in the Secretary by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), the application of which does not violate any right of the allotment applicant.

Herman Joseph (On Reconsideration), 22 IBLA 266 (Oct. 30, 1975)

It is unnecessary for the Secretary to consult with men experienced in the exploitation of geothermal steam to make a determination of a known geothermal resources area. It is sufficient that he entertain the opinion that any or all of the elements delineated in 30 U.S.C. § 1001(e) (1970), would engender a belief in such men that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

Robert C. Harper, 24 IBLA 44 (Feb. 23, 1976)

The Secretary of the Interior or his delegate is not obligated to issue a grazing permit or license to an applicant; the issuance of such permits or licenses is committed to agency discretion; therefore, the Secretary may refuse to issue or to renew such license where the applicant, to enhance his grazing operation, has violated the terms of a statute or regulation prohibiting the killing of wildlife.

National Wildlife Federation (Appellant) v. Bolten Ranch, Inc. (Respondent), 24 IBLA 391 (May 3, 1976)

In the absence of specific statutory authority to lease, the Secretary of the Interior has implied authority, as guardian of the public's natural resources, to lease an oil and gas deposit under his jurisdiction when it is in danger of being drained by wells drilled on adjacent land. However, such protective leases may be issued only by competitive bidding.

James L. Santy, 25 IBLA 390 (July 6, 1976)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where a Bureau of Land Management districtwide environmental analysis record establishes the likelihood that significant archaeological values are prevalent in the district and may be found in the land embraced by leases in that district, a special protective stipulation is not unreasonable solely because no archaeological values have yet been discovered in the lands in the lease offer.

Cecil A. Walker, Alan C. F. Dillet, 26 IBLA 71 (July 9, 1976)

SECRETARY OF THE INTERIOR--Continued

The Secretary of the Interior has complete discretion to determine whether the surface of public land reported as valuable for any leasable mineral should be disposed of and a nonmineral application may be allowed only if it is determined by the proper officer with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Act.

The Kemmerer Coal Co., 26 IBLA 127 (July 30, 1976)

Since the Bureau of Land Management has no authority to issue a public land order withdrawing land, such authority existing only in the Secretary, the Under Secretary, and the Assistant Secretaries of the Department of the Interior, recommendations by officers of the Bureau of Land Management relating to withdrawals are not subject to review under the provisions of 43 CFR 4.450-2 or 43 CFR 4.410.

City of Kotzebue, 26 IBLA 264 (Aug. 20, 1976)
83 I.D. 313

The Secretary of the Interior has the authority to determine the validity of mining claims upon adequate notice and opportunity for hearing.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

The Secretary has authority to correct an erroneous Government survey under 43 U.S.C. § 2 (1970).

Taos Pueblo Tract C, M-36884 (Oct. 28, 1976)
83 I.D. 529

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a Secretarial Order provides that all oil and gas noncompetitive offers must, prior to issuance of a lease, be referred to Geological Survey for a determination of whether the lands are within a known geological structure, and the authorized officer fails to follow such procedure prior to the signing, such signing is not authorized and, therefore, not binding on the Secretary.

Nola Grace Ptasynski (Supp.) (On Court Remand), 28 IBLA 256 (Dec. 20, 1976)

The Department of the Interior does not have the authority to modify a statute ratifying an agreement with an Indian tribe on the grounds of fraud or coercion in the execution of the agreement.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

It is unnecessary for the Secretary, or his delegate, to consult with men experienced in the exploitation of geothermal steam to make a determination of a known geothermal resources area. It is sufficient that he entertain the opinion that any or all of the elements delineated in 30 U.S.C. § 1001(e) (1970), would engender a belief in such men that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

Earth Power Corp., 29 IBLA 37 (Feb. 16, 1977)

The Secretary of the Interior is not authorized to issue a patent to a mining claim until the requirements of the law have been met.

United States v. Fred and Eileen Garner, 30 IBLA 42 (Apr. 18, 1977)

Where the Bureau of Land Management orders a resurvey of a section to identify the boundaries of public land within the section, a private landowner may protest the resurvey and, where the protesting landowner points up a serious contradiction between the resurvey and the topographic calls accompanying the original plat, it is proper to remand the case for a fact hearing.

Domenico A. Tussio et al., 30 IBLA 92 (Apr. 29, 1977)

The Secretary of the Interior may cause to be made such resurveys or retracements of the rectangular system of surveys of public lands as he may deem essential to mark the boundaries of the remaining public lands.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

Where a decision of the Board of Land Appeals is based upon an interpretation of Departmental policy, and that policy is subsequently revised and clarified so as to impel a different result in the case without prejudice to the right of any third party, on reconsideration by the Board that portion of its original decision will be modified and the revised policy will be implemented.

Warner Bergman (On Reconsideration), 31 IBLA 21 (June 20, 1977)

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, proposed special stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest. It is the Bureau's responsibility to impose stipulations which are necessary, appropriate and reasonably related to oil and gas activities, and a stipulation which would forbid the lessee to occupy the surface must be set aside on appeal where BLM fails to provide adequate justification for its imposition and fails to show that it has considered less stringent stipulations.

Reva H. Henderson, 31 IBLA 217 (July 6, 1977)

Where, in the public interest, the Secretary decides not to reopen land to settlement, a would-be settler on this land is denied no rights by this decision.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

It is within the power of the Bureau of Land Management, as delegated by the Secretary of the Interior, to retrace any survey it has made whenever it becomes necessary to the determination of a question pending before it for decision involving rights to the public land.

Stanley A. Phillips et al., 31 IBLA 342 (July 22, 1977)

Until such time as the Department promulgates regulations, policy guidelines or criteria implementing sec. 302 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management may properly defer action on the proposed creation of an estate in Federal land thereunder.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

Pursuant to the Property Clause of the U.S. Const. art. IV, § 3, cl. 2, Congress has enacted the Taylor Grazing Act, 43 U.S.C. § 315 et seq. (1970), and other statutory authority which empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and to determine whether or not an individual has committed a trespass.

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States, including lands within the National Forest System, after adequate notice and opportunity for hearing. A mining claim contest initiated under the authority of the Secretary of the Interior may be prosecuted by counsel employed by the Department of Agriculture acting on behalf of the Forest Service where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. Ernest F. Diven and Richard J. T. Anderson, 32 IBLA 361 (Oct. 25, 1977)

The decision to issue an oil and gas lease to the first-qualified offeror is within the discretion of the Secretary of the Interior, and offers within proposed wild and scenic river areas may be rejected to protect such areas.

Questa Petroleum Co., 33 IBLA 116 (Dec. 16, 1977)

Pursuant to the Act of Feb. 15, 1901, repealed by sec. 706(a) of the Act of Oct. 21, 1976 (90 Stat. 2743, 2793), the Department had discretionary authority to permit the use of a right-of-way across public lands to supply water for domestic purposes; however, a right-of-way application for such use was properly rejected where approval of the grant would be contrary to the public interest.

Broken H. Ranch Co., 33 IBLA 386 (Jan. 26, 1978)

The promulgation or revocation of a regulation is within the special authority of the Secretary of the Interior and a limited number of delegates. A regulation, when promulgated, is binding upon all Departmental officials.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

The Federal coal program was substantially revised in 1975 by the Secretary in proper exercise of his discretion. The Bureau of Land Management did not act in an arbitrary and capricious manner when, under the new coal policy, it suspended applications for coal prospecting permit extensions and the applications were eventually rejected because the Federal Coal Leasing Amendments Act of 1975 removed the authority to grant coal prospecting permit extensions. A program pursued for a period of time under a statutory grant of discretionary authority may be reviewed and revised at any time provided it is not done in an arbitrary manner and is done within the authority granted by Congress.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978) 85 I.D. 161

Thomas C. Woodward, 35 IBLA 262 (May 31, 1978)

"Subject to valid existing rights." The Secretary of the Interior in making withdrawals "subject to valid existing rights" in PLO 5179 and PLO 5250 intended exceptions to withdrawal to apply in behalf of only those claimants who themselves held such valid rights at time of withdrawal. The Secretary did not intend existence of another's valid rights on withdrawal date to restrain withdrawal so as to allow a topfiling claimant to enter pertinent lands after withdrawal date and independently establish rights under mining laws.

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

The Secretary of the Interior has plenary authority over the public lands, including mineral lands, and has been entrusted with the function of making the initial determination of the validity of claims against such lands.

United States v. Paul R. Fisher and Ruel R. Fisher, 37 IBLA 80 (Sept. 22, 1978)

United States v. Edward T. McHenry et al., 43 IBLA 122 (Sept. 26, 1979)

Under 43 CFR 4.1 the existence of a Secretarial policy limits review by the Board of Land Appeals to the question of whether the action under review is consistent with that policy.

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. Oil and gas lease offers within area proposed for inclusion in the wild and scenic river system may be rejected to protect such areas.

Dean W. Rowell, 37 IBLA 387 (Nov. 6, 1978)

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

Where the Secretary has declined to exercise his jurisdiction, a decision rendered by this Board is final for the Department. Hence, statements by BLM and arguments of the Solicitor, while valuable to the Board, are not binding upon the Board.

H. R. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

The failure of the BLM officer to follow the procedure set out in a Secretarial Order requiring all offers, prior to issuance of a lease, to be sent to Geological Survey for a determination of whether the lands are within a known geologic structure, renders the signing of the lease unauthorized, and thus not binding on the Secretary.

United States v. William T. Alexander (On Court Remand), 41 IBLA 1 (May 21, 1979)

A decision by the Bureau of Land Management canceling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

Blue Star, Inc., Atomic Western, Inc., Fremont Energy Corp., Ivor Adair, 41 IBLA 333 (July 11, 1979)

The Taylor Grazing Act, 43 U.S.C. §§ 315a-315r (1970), and other statutory authority empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and whether or not an individual has committed a trespass.

Bureau of Land Management v. Harris Brothers, 42 IBLA 48 (July 31, 1979)

A decision rejecting a Native allotment application because there was not 5 years of use and occupancy of the land prior to a withdrawal affecting the land, will be set aside and the case remanded to the Bureau of Land Management for readjudication in accordance with Secretarial Order No. 3040 of May 25, 1979, which rescinds a former guideline requiring the 5 years prior to the withdrawal and now permits allotment after 5 years' use

and occupancy has been completed provided the applicant had either filed an application or commenced use and occupancy prior to a withdrawal.

Ella S. Sheldon et al., 42 IBLA 276 (Aug. 27, 1979)

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, on appeal such special stipulations must be supported by valid reasons which will be weighed by the Department with due regard for the public interest, and where the stipulation and reason therefore does not appear in the record, the record must be augmented on remand.

James M. Chudnow, 43 IBLA 375 (Oct. 31, 1979)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the request of the U.S. Forest Service and prosecuted by counsel employed by the U.S. Department of Agriculture, with U.S. Forest Service employees as witnesses.

United States v. Jon Zimmers and Claire Kelly, 44 IBLA 142 (Nov. 30, 1979)

The Bureau of Land Management, on behalf of the Secretary of the Interior, may condition issuance of a lease on the execution of a no surface occupancy stipulation where on appeal the record shows that the Bureau has adequately considered the factors involved and the stipulation is a reasonable means to accomplish proper Departmental purposes.

H. E. Shillander, 44 IBLA 216 (Dec. 11, 1979)

SEGREGATION

GENERALLY

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq.* (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 *et seq.* (1970), until the lease is canceled of record.

The filing of an Alaska State selection for land in an Alaska grazing lease constitutes a petition for determination under 43 CFR 4131.3-1, and upon favorable determination and cancellation of the lease, the State's rights, including segregation of the land in its favor, relate back to the filing of the selection.

Native use and occupancy of land within an Alaska grazing lease does not preclude the State from selecting the land as "vacant and unappropriated" land within the meaning of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes prec. § 21 (1970). The initiation of use and occupancy subsequent to the segregation of the land in favor of the State gives an applicant no rights to an allotment.

Sandra M. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

Good Roads District No. 1, 25 IBLA 123 (June 7, 1976)

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 et seq. (1970), until the lease is canceled of record pro tanto.

Myrtle M. Jensen Shanigan, 29 IBLA 255 (Mar. 25, 1977)

Publication in the Federal Register of a notice of proposed classification pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice.

Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws by a notice of proposed classification, 43 CFR 2461.2, the validity of the claim must be tested as of the date of the published notice, as well as of the date of determination. If the claim was not supported by such a discovery at the date of the published notice of classification, the land within the claim located in the classified area would not be excepted from the effect of the withdrawal.

United States v. R. E. Rodgers and Barbara J. Rodgers, 32 IBLA 77 (Sept. 2, 1977)

A classification of the lands under the Recreation and Public Purposes Act, 43 U.S.C. § 869 (1970), as amended, segregates the land from all other forms of appropriation under the public land laws including the mining laws when the classification is noted on the Bureau of Land Management State Office records.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

There is a legal distinction between the administrative segregation of land under application for withdrawal, pending action on the application, and the completed withdrawal itself.

"Segregation" is an administrative procedure preliminary to favorable or unfavorable action on a withdrawal application by the Secretary of the Interior in the exercise of his delegated authority under the Pickett Act, 43 U.S.C. § 141 et seq. (1970), and is not legally equivalent, in its effect on the status of the land, to a completed withdrawal or reservation.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

A mining claim located on land at a time when the land is segregated from mining location by a State selection application is properly declared null and void at initio.

W. Ted Hackett, 39 IBLA 28 (Jan. 11, 1979)

Prior to passage of the Multiple Mineral Development Act, 30 U.S.C. §§ 521-31 (1976), a prima facie valid mineral lease, or application therefor, though void and ineffectual to vest any rights to minerals subject to the mining laws in the lessee segregated the land from the operation of the mining laws and prevented the initiation of rights under the mining laws by another person until it had been set aside and removed from the records of the land office.

Charles House, Mrs. Leonard Skinner, 42 IBLA 364 (Sept. 11, 1979)

FILING OF APPLICATION

The date of the segregation from settlement, caused by the filing of a State selection application in the appropriate office of the Bureau of Land Management, is not tantamount to the "effective date" of "[a] withdrawal or reservation" described in the Secretarial directive of Oct. 18, 1973. Therefore, Native use and occupancy commenced before such segregation may continue, unhampered by such segregation, to gain the requisite 5 years' use and occupancy required under 43 U.S.C. §§ 270-1 to 270-3 (1970).

Victor A. Anahonak, 21 IBLA 347 (Aug. 18, 1975)

The filing of an amended Alaska State Selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Klatt, Allan D. Klatt, 23 IBLA 59 (Dec. 11, 1975)

A selection application under the Alaska Statehood Act filed in the appropriate Bureau of Land Management office for properly described land segregates the land from all appropriation based upon subsequent application or settlement and location.

John W. Eastland et al., 24 IBLA 240 (Mar. 25, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed State application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia L. Ellis, 24 IBLA 387 (May 3, 1976)

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

Good Roads District No. 1, 25 IBLA 123 (June 7, 1976)

SEGREGATION--Continued

FILING OF APPLICATION--Continued

The filing by a qualified applicant of a homestead application to enter unappropriated surveyed lands in Alaska segregates the land covered by the application from appropriation. Such an application will be considered to have created a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

The filing by a qualified applicant of an application for an allowed homestead entry of land which is open and available to such entry at the time of filing will operate to segregate the land from subsequent appropriation and invest the applicant with sufficient interest therein to preserve the land from the effect of a subsequent withdrawal which is made subject to valid existing rights.

Richard T. Pope, 27 IBLA 33 (Sept. 20, 1976)

Under 43 CFR 2091.6-3 and 2627.4(b), the filing of a State's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

Janelle R. Deeter, Gary R. Deeter, Verna R. Lyons, Harry D. Lyons, 34 IBLA 81 (Feb. 22, 1978)

Joe D. Denson, 43 IBLA 136 (Sept. 28, 1979)

The filing of an application for withdrawal of public lands by a Federal agency segregates the land from location, sale, selection, entry, lease, or other forms of disposal under the Public Land Laws to the extent that such withdrawal, if effected, would prevent such forms of disposal.

Segregation of lands covered by a withdrawal application filed by a military agency, accomplished by a notation of the land records, does not prevent statutory withdrawal of such lands for selection by a Native Corporation pursuant to sec. 11 of ANCSA.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

SETTLEMENTS ON PUBLIC LANDS

A homestead notice of location filed for lands open to location is acceptable for recordation. Where a homestead settler has marked the corners of his claim by posts prior to a withdrawal subject to valid existing rights, the claim survives the withdrawal if the location notice requirements have been satisfied.

Robert A. Rice, Jr., 22 IBLA 291 (Nov. 3, 1975)

An Alaska Native allotment applicant may not use the occupancy of public land by forebears to qualify herself for an allotment, nor does the use and occupancy of public land by a forebear, while the land was open to settlement, create any right that excepts the land from a withdrawal in favor of an applicant who initiated independent use and occupancy subsequent to the withdrawal.

Sandra M. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

Myrtle M. Jensen Shanigan, 29 IBLA 255 (Mar. 25, 1977)

SETTLEMENTS ON PUBLIC LANDS--Continued

A notice of location filed under the Alaska settlement law, 43 U.S.C. § 687a (1970), regular on its face, for land which is open to such settlement and location, is acceptable for recordation. If a withdrawal follows the filing of a notice of location, the proper inquiry is into the validity of the claim, *i.e.*, whether the locator has by acts of settlement and improvement established a valid existing right protected from the effect of the withdrawal.

Mary C. Rolen, 24 IBLA 100 (Mar. 1, 1976)

A settlement claim initiated after a State selection application is filed and the land segregated from appropriation creates no rights in the settler.

John W. Eastland et al., 24 IBLA 240 (Mar. 25, 1976)

Where an applicant to purchase a trade and manufacturing site or a headquarters site states he was frustrated in completing his improvements and showing sufficient use of the land as required by the law because of more difficult or complex problems than anticipated, but has not shown that this operation could reasonably be expected to be successful, such problems will not afford any basis for equitable adjudication of his application to purchase.

United States v. Ronald E. Tippetts, 29 IBLA 348 (Mar. 31, 1977)

Where a notice of location of settlement claim is filed covering land which is not available for entry, the notice must be rejected and cannot be suspended to await the possible restoration of the land to entry.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

A Native allotment applicant, who was 5 years old at the time when the land was withdrawn from all forms of appropriation, is properly deemed to be incapable as a matter of law of having exerted independent use and occupancy of the land to the exclusion of others prior to the withdrawal and consequently the allotment application is properly rejected.

An allotment right is personal to one who has complied with the laws and regulations. An applicant for a Native allotment may not rely or tack on use and occupancy of the land by his ancestors to establish his right.

Floyd L. Anderson, Sr., 41 IBLA 280 (June 28, 1979) 86 I.D. 345

An allotment right is personal to one who has complied with the laws and regulations. An applicant for a Native allotment may not rely on or tack on use and occupancy of the land by his ancestors to establish his right.

A Native allotment applicant, who was 5 years old at the time when the land was withdrawn from all forms of appropriation, is properly deemed to be incapable as a matter of law of having exerted independent use and occupancy of the land to the exclusion of others prior to the withdrawal and consequently the allotment application is properly rejected.

Public Land Order No. 2213 of Dec. 8, 1960, establishing the Kuskokwim National Wildlife Range withdrew certain lands from all forms of appropriation under the public land laws, and although such order preserved to Natives the right to hunt, fish, and trap thereon, the lands were no longer subject to initiation of rights

SETTLEMENTS ON PUBLIC LANDS--Continued

under the Native Allotment Act once the order became effective.

Peter Panruk, 43 IBLA 69 (Sept. 19, 1979)

A Native allotment applicant, who was 5 years old at the time when the land was withdrawn from all forms of appropriation, is properly deemed to be incapable as a matter of law of having exerted independent use and occupancy of the land to the exclusion of others prior to the withdrawal and consequently the allotment application is properly rejected.

Nicky Nickoli, 43 IBLA 296 (Oct. 17, 1979)

SMALL TRACT ACT

GENERALLY

Where land was subject to a mining claim at the time a small tract classification order withdrew the land from mineral entry and the mining claim was thereafter declared null and void, a subsequent transferee of the mining claim has no standing to object to the order classifying the land under the Small Tract Act.

Richard B. and Shirley A. Jarrett, 19 IBLA 78 (Feb. 27, 1975)

Where a Public Land Order withdraws land from all forms of appropriation under the public land laws for proper classification of the lands under Alaska Native Claims Settlement Act and for protection of public interest values, but provides that the withdrawn lands are subject to administration by the Secretary of the Interior under applicable laws and regulations and his authority to grant leases, an application for Small Tract lease accompanied by a petition for classification may be accepted for filing by the Bureau of Land Management. Ultimate disposition of the application will be dependent upon the classification of the land involved.

Elizabeth A. Sharp, 19 IBLA 312 (Apr. 7, 1975)

It is not an abuse of the Secretary's discretion under the Small Tract Act to offer a renewable 5-year lease instead of fee title where it appears that the latter form of tenure would interfere with proper resource development and management programs.

Edward W. Kirk, Beatrice Anne Kirk, Ralph Hevener, Ramona F. Hevener, 20 IBLA 156 (May 5, 1975)

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

George D. Jackson, 20 IBLA 253 (May 16, 1975)

Where a decision fixes a small tract rental derived from an appraisal report which does not comport with Departmental standards, the decision will be set aside and the case remanded for a new appraisal to establish the fair rental value.

Junction Oil Co., Inc., 21 IBLA 78 (June 25, 1975)

SMALL TRACT ACT--Continued

GENERALLY--Continued

Department of the Interior policy requires that, in most circumstances, full value be received by the Government in any sale of public land.

The mere filing of a small tract purchase application does not create in the applicant any right or interest in the land.

A notification to a small tract lessee, which was authorized by a memorandum of the Director, Bureau of Land Management, dated Oct. 19, 1955, and approved by the Secretary of the Interior on Nov. 9, 1955, that the lessee could purchase the tract under lease without constructing the improvements required in the option to purchase clause of the lease, if he paid the appraised price shown on the lease within a set time, was an offer to sell the tract by the United States, and exercise of the option by the lessee created a binding contract. Where issuance of the patent was delayed for years because of the contest of a conflicting mining claim, reappraisal to determine changed value since that time is not permissible because there was a binding contract under special authority.

Abraham Epstein, 24 IBLA 195 (Mar. 19, 1976)

The issuance of a lease for public lands under the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), is within the discretion of the Secretary of the Interior. A decision to offer such a lease to a party residing in certain improvements on the public domain without claim of title to the land on which the improvements are located is not an abuse of discretion and will be upheld where the land is primarily valuable for outdoor recreation purposes and is important for purposes of providing public access to recreation opportunities on other public land and, thus, disposal of a fee simple interest would be inconsistent with good land management practices.

No rights are initiated under the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), by occupying or improving the land prior to receiving authority to do so.

An applicant for land under the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), cannot acquire any rights in the land by virtue of administrative delay.

Robert Gladwell, 26 IBLA 270 (Aug. 24, 1976)

The Small Tract Act, as amended, 43 U.S.C. § 682a et seq. (1970) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, and no land may be purchased under this Act. Where a State Office decision approves an application for purchase of a tract of land filed pursuant to the Small Tract Act in order to correct an error in a land description in another patent previously issued to appellants under the Small Tract Act, the decision will be reversed and the case remanded to the State Office for determination of whether the original patent may be corrected under sec. 316 of FLPMA, Correction of Conveyance Documents, 43 U.S.C. § 1746 (1970).

Richard C. Cole et al., 38 IBLA 175 (Dec. 6, 1978)

The Small Tract Act, 43 U.S.C. § 682a-e (1970), was repealed by sec. 702, Federal Land Policy and Management Act of 1976, Oct. 21, 1976, P.L. 94-579, 90 Stat. 2787. Renewal of a small tract lease was discretionary under the former Small Tract Act, so there was no right to renewal of a small tract lease preserved by sec. 701 of FLPMA. Any use or occupancy of the public domain

SMALL TRACT ACT--Continued

GENERALLY--Continued

granted subsequent to Oct. 21, 1976, must be under authority contained in FLPMA.

Arthur G. Lane, Jr., 38 IBLA 297 (Dec. 14, 1978)

APPLICATIONS

Where a Public Land Order withdraws land from all forms of appropriation under the public land laws for proper classification of the lands under Alaska Native Claims Settlement Act and for protection of public interest values, but provides that the withdrawn lands are subject to administration by the Secretary of the Interior under applicable laws and regulations and his authority to grant leases, an application for Small Tract lease accompanied by a petition for classification may be accepted for filing by the Bureau of Land Management. Ultimate disposition of the application will be dependent upon the classification of the land involved.

Elizabeth A. Sharp, 19 IBLA 312 (Apr. 7, 1975)

APPRAISALS

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

Where the current fair market value of land has been determined in accordance with accepted appraisal procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

George D. Jackson, 20 IBLA 253 (May 16, 1975)

Where a decision fixes a small tract rental derived from an appraisal report which does not comport with Departmental standards, the decision will be set aside and the case remanded for a new appraisal to establish the fair rental value.

Junction Oil Co., Inc., 21 IBLA 78 (June 25, 1975)

An appellant contending that the rental for a small tract lease (Act of June 1, 1938, *as amended*) set by BLM appraisal is excessive has the burden of proving by substantial and positive evidence that the appraisal is in error.

Henry O. Woodruff, 24 IBLA 190 (Mar. 18, 1976)

Where an applicant for a small tract lease contends the rental set by the Bureau of Land Management is too high, the burden is upon him to prove by positive and substantial evidence that the appraisal is in error.

Opal H. Lofquist, 28 IBLA 111 (Nov. 15, 1976)

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures, and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Junction Oil Co., Inc., 28 IBLA 183 (Dec. 6, 1976)

CLASSIFICATION

The issuance of a lease for public lands under the Small Tract Act, 43 U.S.C. § 682a *et seq.* (1970), is within the discretion of the Secretary of the Interior. A decision to offer such a lease to a party residing in certain improvements on the public domain without claim of title to the land on which the improvements are located is not an abuse of discretion and will be upheld where the land is primarily valuable for outdoor recreation purposes and is important for purposes of providing public access to recreation opportunities on other public land and, thus, disposal of a fee simple interest would be inconsistent with good land management practices.

Robert Gladwell, 26 IBLA 270 (Aug. 24, 1976)

The Small Tract Act, 43 U.S.C. § 682a-e (1970), was repealed by sec. 702, Federal Land Policy and Management Act of 1976, Oct. 21, 1976, P.L. 94-579, 90 Stat. 2787. Renewal of a small tract lease was discretionary under the former Small Tract Act, so there was no right to renewal of a small tract lease preserved by sec. 701 of FLPMA. Any use or occupancy of the public domain granted subsequent to Oct. 21, 1976, must be under authority contained in FLPMA.

Arthur G. Lane, Jr., 38 IBLA 297 (Dec. 14, 1978)

LANDS SUBJECT TO

Land along the Lower Colorado River which has been designated in a land use plan approved by the Secretary of the Interior as a public recreation area is not subject to disposal under the Small Tract Act of June 1, 1938, 43 U.S.C. § 682a (1970).

John Paul Hinds, Ruth M. Hinds, 18 IBLA 385 (Jan. 31, 1975)

RENEWAL OF LEASE

The filing of an application to lease under the Small Tract Act does not vest any legal right or interest in the applicant, for it is within the discretion of the Secretary whether or not to exercise his authority to lease the land.

Alva E. Muse and Barbara J. Muse, 30 IBLA 36 (Apr. 11, 1977)

SODIUM LEASES AND PERMITS

GENERALLY

In exercising the Secretary of the Interior's discretionary authority to lease known sodium deposits under the Mineral Leasing Act, an application to have the lands leased is properly rejected where it appears that the land applied for and surrounding environment near a national recreation area may be more severely damaged than most other sites within the known sodium leasing area, there is local governmental and other opposition to the leasing, and Bureau of Land Management and Forest Service officials recommend preparation of

GENERALLY--Continued

an Environmental Impact Statement for the entire known sodium area before leasing further lands in the area.

Eugene V. Simons, 26 IBLA 208 (Aug. 16, 1976)

A silicate will be considered to be a sodium silicate and subject to disposal under the Mineral Leasing Act either where the sodium within the deposit is commercially valuable or where the sodium is essential to the existence of the mineral.

United States v. Union Carbide Corp., 31 IBLA 72 (June 24, 1977) 84 I.D. 309

"Other related products." "Other associated deposits." When sodium or potassium brines are covered by leases conveying the exclusive right to mine and dispose of sodium compounds and other related products or potassium compounds and other associated deposits, the leases convey the exclusive rights to all minerals dissolved in the brine, including lithium.

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978) 85 I.D. 171

LEASES

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1970), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corp., 25 IBLA 153 (June 10, 1976)

In exercising the Secretary of the Interior's discretionary authority to lease known sodium deposits under the Mineral Leasing Act, an application to have the lands leased is properly rejected where it appears that the land applied for and surrounding environment near a national recreation area may be more severely damaged than most other sites within the known sodium leasing area, there is local governmental and other opposition to the leasing, and Bureau of Land Management and Forest Service officials recommend preparation of an Environmental Impact Statement for the entire known sodium area before leasing further lands in the area.

Eugene V. Simons, 26 IBLA 208 (Aug. 16, 1976)

LEASES--Continued

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977) 84 I.D. 342

Where Bureau of Land Management terminates a sodium lease because lessee failed to submit justification for holding a lease in excess of the acreage limitation, the decision will be set aside upon submission or explanation of failure to provide written information, and the case will be remanded for the State Office to determine whether the information submitted on appeal justifies continued lease tenure.

Olin Corp., 39 IBLA 161 (Jan. 29, 1979)

PERMITS

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1970), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corp., 25 IBLA 153 (June 10, 1976)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error, but merely asserts that earlier filed sodium permit applications were erroneously approved, does not meet the requirements of the Department's rules of practice and is properly dismissed.

It is proper to reject sodium permit applications to the extent that they conflict with prior filed applications which have ripened into permits.

James G. Macey, 26 IBLA 191 (Aug. 10, 1976)

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental Manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set

SODIUM LEASES AND PERMITS--Continued

PERMITS--Continued

aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess et al., 27 IBLA 4 (Sept. 17, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to area withdrawn for wildlife concervation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes, 27 IBLA 46 (Sept. 23, 1976)

Under 30 U.S.C. § 262 (1970), a valuable deposit of sodium must be leased competitively even though the Geological Survey determination that lands are so known may have been made subsequent to appellant's filing of its application.

Under 30 U.S.C. §§ 162 and 262 (1970), valuable deposits of sodium compounds are not open to location and disposition under the mining laws, but may be disposed of only under the Mineral Leasing Act, except for certain claims under 43 CFR 3501.1-1(b), existent at passage of Mineral Leasing Act of 1920 which have since been maintained in accordance with statute and regulation.

Permian Mud Service, Inc., 31 IBLA 150 (June 30, 1977)
84 I.D. 342

PREFERENCE RIGHT LEASES

In determining whether a permittee is entitled to a preference right lease the Secretary must consider all legal and economic conditions affecting the proposed operation of the lease as of the time of the determination, including the applicable statutory minimum production royalty rate. A preference right lease must provide for a production royalty rate in conformity with the statutory minimum rate applicable at the time of issuance.

Reduction of Production Royalties Below Statutory Minimum Rates, M-36920 (Dec. 11, 1979) 87 I.D. 69 (1980)

ROYALTIES

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed of under sodium and potassium leases must be imposed on the "gross value of the sodium (or potassium) compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market, and in general, no deductions may be allowed for costs incurred in developing a product to a marketable condition except for the price of reagents which are chemically combined with the product sold from the lease.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

SODIUM LEASES AND PERMITS--Continued

ROYALTIES--Continued

In determining whether a permittee is entitled to a preference right lease the Secretary must consider all legal and economic conditions affecting the proposed operation of the lease as of the time of the determination, including the applicable statutory minimum production royalty rate. A preference right lease must provide for a production royalty rate in conformity with the statutory minimum rate applicable at the time of issuance.

Reduction of Production Royalties Below Statutory Minimum Rates, M-36920 (Dec. 11, 1979) 87 I.D. 69 (1980)

SOLDIERS' ADDITIONAL HOMESTEADS

GENERALLY

Since the statute authorizing cash payment to the holder of soldiers' additional rights requires that an applicant for such payment must give written notice to the Secretary of the Interior of his election to receive such payment prior to Jan. 1, 1975, an application received on Jan. 2, 1975, must be rejected.

J. Sidney Rood, 20 IBLA 319 (June 4, 1975)

Transfers of scrip or selection rights which are presented to the Department of the Interior for recordation pursuant to the Scrip Recordation Act more than 6 months after they were made cannot be accepted for recording or serve as a basis for the acquisition of lands. An application to elect to receive cash rather than land, which is based upon a transfer of a soldiers' additional homestead selection right filed more than 6 months after it was made, must be rejected.

Where an applicant to receive cash in satisfaction of a soldier's additional homestead selection right fails to establish a complete chain of title from the soldier-entryman to the applicant, a purported assignment of the right to the applicant cannot be recognized and the application must be rejected.

Margaret W. Chivers, 21 IBLA 124 (July 14, 1975)

The requirement of the Act of Aug. 5, 1955, 69 Stat. 535, that within 6 months of any transfer of scrip rights the holding or claim of right must be presented for recordation by the Department, presupposes a valid transfer. Where the holder of a soldier's additional homestead right shows that the transfer was fraudulent and without his knowledge, the failure of the fraudulent transferee to record the right will not extinguish the right claimed by the innocent holder.

Upon the death of a soldier-entryman the soldier's additional homestead right vests in his estate, subject to the right of his widow or minor orphan children to appropriate it pursuant to the terms of the statutory grant. Upon the death of the soldier-entryman's widow, and in the absence of minor orphan children, the right becomes absolute in the heirs of the soldier-entryman at the time of his death.

Where an applicant seeks to assert a soldier's additional homestead right which has been determined to be invalid in an earlier proceeding, and does not submit compelling legal or equitable reasons for reconsideration, but merely seeks to reargue the previous determination, the attempted exercise of soldier's additional homestead rights will be rejected.

George Rodda, Jr., 27 IBLA 186 (Oct. 4, 1976)

SOLDIERS' ADDITIONAL HOMESTEADS--Continued

GENERALLY--Continued

An application by a remote assignee to exercise soldiers' additional homestead rights is properly rejected when the validity of the right on which the assignment is based has not been established.

George Rodda, Jr., 37 IBLA 189 (Oct. 11, 1978)

SOLICITOR, DEPARTMENT OF THE INTERIOR

Where the Secretary has declined to exercise his jurisdiction, a decision rendered by this Board is final for the Department. Hence, statements by BLM and arguments of the Solicitor, while valuable to the Board, are not binding upon the Board.

H. B. Delasco, Inc., et al., 39 IBLA 194 (Feb. 2, 1979)

SPECIAL USE PERMITS

The Bureau of Land Management, in the exercise of its discretionary power to issue special land use permits, may establish special fee assessments for off-road vehicle (ORV) events.

The filing of an application for a special land use permit does not vest in the applicant any rights which preclude the Bureau of Land Management from requiring compliance with fee assessments adopted after the date of such filing but before issuance of the permit. In the absence of a provision that pending applications are to be exempted from the effects of the change in fee requirements, the applicant must comply with the fee assessment in effect at the time of the issuance of the special land use permit.

An applicant's special land use permit application does not fall within the "firm commitment" exception of a Bureau of Land Management instruction memorandum requiring revised fee assessments for off-road vehicle (ORV) permits where, subsequent to issuance and notice of the memorandum, the application is still in the preliminary processing stage requiring additional pre-event meetings, the applicant's acceptance of special stipulations, and further staff investigation and review before approval; however, the case will be remanded for further consideration where the District Office decision does not determine whether the application falls within the memorandum exception which permits the honoring of "negotiations which have progressed too far to negate."

Walt's Racing Ass'n, 18 IBLA 359 (Jan. 30, 1975)

Where a special land use permit application to use land in support of various military programs, as an impact area for all types of air delivered items including parachute drops, arms firing, and inert items dropped from dispensers, is rejected, on the basis that the issuance of a renewal permit could result in undue risk to the safety of the public, without the preparation of an environmental impact analysis and without consideration of possible limitations upon use, the case will be remanded for such action.

Flight Systems, Inc., 19 IBLA 58 (Feb. 25, 1975)

The issuance of a special land use permit is discretionary, and the Bureau of Land Management may reject a special land use permit application when the proposed use would adversely affect the public interest, and may offer, in the alternative, a permit providing for use

SPECIAL USE PERMITS--Continued

consonant with proper management of national resource lands.

Jerry Tecklin, Leonard Brackett, 20 IBLA 308 (May 30, 1975)

An applicant's special land use permit application does not fall within a Bureau of Land Management instruction memorandum exception which permits the honoring of past "negotiations which have progressed too far to negate," in lieu of the new revised fee assessment required by the memorandum for off-road vehicle events, where at the time of issuance and notice of the memorandum only preliminary negotiations had occurred which could still be negated.

Walt's Racing Ass'n, 22 IBLA 238 (Oct. 22, 1975)

The issuance of a special land use permit by the Bureau of Land Management is clearly discretionary, but the Bureau may not issue a permit when the provisions of existing laws may be invoked to provide for the proposed use. However, if a withdrawal of the lands in issue precludes the invocation of such provisions, a permit may be granted if consistent with the public interest. Where the land has been withdrawn by Executive Order No. 6206 of July 16, 1933, for the protection of the water supply of the City of Los Angeles, and the City objects to the issuance of a permit for agricultural purposes, but does not show why it objects, the case will be remanded to develop the facts and for further appropriate consideration.

Edward L. Butterworth, 23 IBLA 136 (Dec. 23, 1975)

Issuance of special land use permits is discretionary, and it is proper to reject an application for such a permit if the use for which the application is made is inconsistent with the objectives of the Bureau of Land Management and programs for public use of the land.

Donald J. Laughlin, d/b/a Riverside Resort & Casino, 25 IBLA 41 (May 12, 1976)

A petition for reconsideration of a decision of the Board of Land Appeals which affirmed the rejection of a special land use permit application will not result in the modification of the earlier decision where that rejection is based upon rational grounds and is consistent with the objectives of the Bureau of Land Management and programs for public use of the land.

Donald J. Laughlin (d/b/a Riverside Resort & Casino) (On Reconsideration), 26 IBLA 154 (Aug. 2, 1976)

The issuance of a special land use permit by the Bureau of Land Management is discretionary, but the Bureau may not issue a permit when the provisions of existing laws may be invoked by the applicant to provide for the proposed use.

A special land use permit may be issued for land being used in trespass for a limited time during pendency of negotiations seeking to effect a land exchange whereby the land occupied in trespass may be patented.

Alfred Gaiser, 26 IBLA 313 (Aug. 30, 1976)

SPECIAL USE PERMITS--Continued

Where the declared administrative policy is to refuse permission for geophysical exploration on lands controlled by sec. 17(d)(1) of the Alaska Native Claims Settlement Act and the subject lands are under consideration for possible inclusion in the national forest system, a decision refusing such permission will be affirmed.

Shell Oil Co., 28 IBLA 378 (Feb. 4, 1977)

Where a corporation has applied for a special land use permit to use certain natural resource lands in its flight testing programs and the Bureau of Land Management has compiled an environmental analysis record and determined that any impact on the environment due to granting of the permit would be minimal and the Federal Aviation Administration is aware of possible air safety problems, yet has not acted to deter the flight test operations, the permit is properly granted despite the objections relating to air safety raised by the military, which holds restricted airspace adjacent to and above 20,000 feet directly over the lands in question.

Where the Bureau of Land Management has dismissed a protest to the issuance of a special land use permit and on appeal the protestant requests an evidentiary hearing, such request will be denied when no evidence is proferred by protestant which would engender the belief that the development of further facts would require a different result.

Department of the Navy, Naval Weapons Center, China Lake, 29 IBLA 324 (Mar. 30, 1977)

A special use permit for commercial passenger carrying river-trip operations may be denied renewal for non-use or reduced for incomplete use over a 2-year period and only use during the crucial high season may be counted in determining usage if the permit so provides. However, where the program is recent and permittees are not fully familiar with its operations, and all the requirements for maintaining the permit are not immediately apparent, a permittee may be given some leeway before his permit is denied renewal.

Wilderness River Outfitters and Trail Expeditions, Inc., 30 IBLA 148 (May 16, 1977)

A special recreation use permit for commercial boat operations may be denied renewal for nonuse over a 2-year period of any allocated passenger days under a properly noticed "use or lose" policy. However, where the permit program is relatively recent and administrative techniques are not fully reliable, and where the appellant documents on appeal some use of its allocation during the 2-year period, the permit should not be denied renewal under the "use or lose" policy.

Canyoneers, Inc., 30 IBLA 354 (June 9, 1977)

The issuance of a special use permit is discretionary, and the Bureau of Land Management properly exercises that discretion where it denies permits for three of four ORV events on the ground that lack of funds, time, and manpower would impede processing of applications and preclude preparation of the requisite environmental analysis records.

Baja Motor Sports, 32 IBLA 142 (Sept. 12, 1977)

SPECIAL USE PERMITS--Continued

A Bureau of Land Management appraisal from which the annual rental for a special use permit is calculated will be upheld unless the permittee shows by substantial and positive evidence, specific errors in the method or facts on which the appraisal is based.

Evidence that Forest Service land has been appraised at lower values and leased at lower rates than allegedly comparable Bureau of Land Management land will not suffice to overturn the latter's practices where no specific error in its methods has been shown.

Where a permittee introduces an alternative comparative sales analysis in opposition to that of the Bureau of Land Management, he must show by substantial and positive evidence why his analysis is valid and the Bureau of Land Management's invalid. Where the issue rests on the assertion of each party's expert on the validity of his respective analysis and the record fails to contain evidence by which this deadlock can be resolved, the case will be remanded for further factfinding.

Michael S. Deering, 33 IBLA 142 (Dec. 19, 1977)

The issuance of a use permit is discretionary, and BLM may reject an application for such a permit where Bureau studies indicate that the uses proposed are inconsistent with the agency's objectives for the lands involved.

Arnold E. Bedell, 37 IBLA 22 (Sept. 12, 1978)

Where an application for a special use permit is not filed until more than 10 months after a deadline for doing so imposed by BLM, it is properly rejected.

Where a permittee is not familiar with an unpublished BLM policy to the effect that the tardy filing of an application for permit renewal in 1978 makes the permittee a "new" applicant in 1979 and, as such, ineligible to receive a permit, BLM's decision enforcing this policy and rejecting the permittee's 1979 application will be reversed.

Outdoor Adventure River Specialists, Inc., 41 IBLA 132 (June 14, 1979)

The issuance of special use permits is discretionary and BLM may properly reject a permit application if the use identified is inconsistent with BLM's objectives, responsibilities and programs for managing the public lands. BLM may propose alternatives or impose restrictions or stipulations in order to issue a permit consistent with its responsibilities.

Southern California Motorcycle Club, Inc., Sierra Club, 42 IBLA 164 (Aug. 17, 1979)

STATE GRANTS

The Secretary of the Interior is authorized and under a duty to determine what lands are public lands and to survey such lands. Neither the Acts admitting Florida into the Union, nor the Reconstruction Act of Mar. 2, 1867, divested the Secretary of the Interior of that authority regarding islands in the State of Florida, nor divested the United States of title to any public lands in the State.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

STATE GRANTS--Continued

Title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, and the State shall succeed to the position of the United States as lessor under such lease.

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

Although a grant to a State pursuant to the Swamp Land Act of 1849 or 1850 is a grant *in praesenti*, in that the State is immediately vested with an inchoate equitable title, the legal title does not pass until the Secretary has determined that the land is swamp in character and otherwise available for disposition.

John Stuart Hunt, Sherman H. Hunt, 31 IBLA 304 (July 22, 1977)
84 I.D. 421

A Bureau of Land Management decision rejecting a selection application by the State of Utah under its Miner's Hospital Grant because the land is deemed mineral in character due to a classification as valuable for oil, gas, and coal will be set aside because it failed to consider relevant statutes and regulations permitting selections of land valuable for minerals leasable under the Mineral Leasing Acts with a reservation of the minerals to the United States.

State of Utah, Department of Natural Resources, 38 IBLA 85 (Nov. 15, 1978)

STATE LANDS

The States possess dominion over the beds of all navigable streams within their borders.

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

Leonard E. McSweyn, 28 IBLA 100 (Nov. 15, 1976)
83 I.D. 556

If the intent of the United States in administering lands now comprising a State was clearly to reserve the bed of a river for some particular purpose, then that intent, embodied in an appropriate legislative or administrative act, results in exclusion of the riverbed from lands passing to the State upon statehood.

Opinion on the Boundaries of and Status of Title to Certain Lands Within the Colville and Spokane Indian Reservations, M-36887 (Feb. 2, 1977)
84 I.D. 72

STATE LAWS

State mining laws relating to discovery may only add to the Federal mining law; such laws cannot diminish the Federal requirements for the discovery of a valuable mineral deposit on a mining claim located on Federal lands.

United States v. John H. Tappan, Jr., et al., 25 IBLA 1 (May 5, 1976)

STATE LAWS--Continued

Possession of Federal land for the period of a State's statute of limitations, which may create title rights in an adverse possessor to non-Federal land, cannot affect the title of land belonging to the United States. Where there is no other acceptable basis for a belief that a claimant has title other than mere adverse possession under such a State law, there is no claim or color of title recognizable under the Color of Title Act, 43 U.S.C. § 1068 (1970).

Manley Rustin and Betty Rustin, 28 IBLA 205 (Dec. 6, 1976)
83 I.D. 617

Under the mining law discovery of a valuable mineral deposit is the *sine qua non* for a valid mining claim. State mining laws relating to discovery may only add to the Federal mining law; such laws cannot diminish the Federal requirements for discovery of a valuable mineral deposit on a mining claim located on Federal lands.

United States v. Bradley F. Denham, 29 IBLA 185 (Mar. 18, 1977)

Where material involving a prior mineral reservation on acquired lands is first submitted on appeal, and the effect of a State statute and State court decree is in issue, it is appropriate to remand the case to the BLM State Office for further consideration.

A. B. Henderson, 30 IBLA 8 (Apr. 4, 1977)

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977)
84 I.D. 475

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

A provision of State law, relating to assessment work on mining claims, which is more liberal than the requirements of Federal law, cannot override such Federal law. Article IV, § 3, cl. 2, of the Federal Constitution vests in the Congress authority to promulgate appropriate laws governing the public lands and other property of the United States.

Bruce Parks, 42 IBLA 18 (July 25, 1979)

The State laws applicable to Federal oil and gas leases are limited to those classes of laws authorized or recognized by sec. 32 of the Mineral Leasing Act, *as amended*, 30 U.S.C. § 189 (1976).

Lamar M. Richardson, Jr., 42 IBLA 333 (Aug. 30, 1979)

A State law which requires filing of proof of assessment work which requirement is more liberal than the recordation requirement of the Federal Land Policy and Management Act of 1976, § 314a, 43 U.S.C. § 1744 (1976), cannot override the more onerous requirements of the latter, since Article VI, Clause 2 of the Federal Constitution makes the Constitution, and laws and treaties made in conformity therewith, the supreme law of the land.

James V. Joyce, 42 IBLA 383 (Sept. 11, 1979)

STATE SELECTIONS

(*See also* School Lands, Swamplands--if included in this Index.)

A selection application by the State of Alaska must be rejected where all of the applied for land is withdrawn from State selection.

State of Alaska, 18 IBLA 351 (Jan. 15, 1975)

Lands withdrawn by sec. 11(a)(1) & (2) of the Alaska Native Claims Settlement Act are subject to selection by qualified Native villages notwithstanding the prior tentative approval of selections of those lands by the State of Alaska pursuant to the Statehood Act.

Where the State of Alaska had received tentative approval of a land selection and had granted a patent to a third party in accordance with sec. 6(g) of the Alaska Statehood Act, and where the State patent was granted before the enactment of the Alaska Native Claims Settlement Act, with the express approval of the various Native groups then concerned, a Native village may not later select those lands pursuant to the Alaska Native Claims Settlement Act, as a valid third party right to the land had already been created.

Where statute and regulation provide that lands selected by the State of Alaska must be surveyed before patent can issue, but no similar requirement has been imposed as a precondition to the conveyance of lands selected pursuant to the Alaska Native Claims Settlement Act, the State's contention that this disparity is discriminatory will not afford a basis for reversing a decision which rejected a State selection application in favor of a conflicting Native village selection.

The fact that filing fees are required as a condition precedent for State selections and are not required for Native village selections pursuant to the Alaska Native Claims Settlement Act is not a basis for vacating a decision awarding lands to the Native villages.

State of Alaska, 19 IBLA 178 (Mar. 18, 1975)

The allowance of a State selection application furthers the discharge of the Federal obligation to fulfill the State's statutory entitlement and, generally, it will be preferred in the public interest over the discretionary application of one who does not have an entitlement of equal dignity.

The denial of a petition for classification and the rejection of an application under the Recreation and Public Purposes Act for a lease of lands which have been withdrawn and which are also subject to a State selection application which, under the terms of the withdrawal order, may be allowed, does not violate the tenets of due process because the disposition of the petition-application is at the discretion of the Secretary, and the petitioner-applicant has no vested right protected by constitutional guarantees or by the Administrative Procedure Act.

Mountaineering Club of Alaska, Inc., 19 IBLA 198 (Mar. 19, 1975)

The filing of a State selection under the Alaska Statehood Act does not create a right that prevents a Native village from selecting those lands under the terms of the Alaska Native Claims Settlement Act.

State of Alaska, 19 IBLA 242 (Mar. 27, 1975)

STATE SELECTIONS--Continued

Under 43 CFR 2091.6-4 and 2562.1(d) a notice of location for a trade and manufacturing site is unacceptable for recordation where the land is not subject to that form of disposition because it has been segregated by State selection applications.

Lloyd Schade, 19 IBLA 251 (Mar. 31, 1975)

The filing of a State selection application under sec. 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, 48 U.S.C. notes prec. § 21 (1970), does not create a right that prevents a Native village from selecting those lands under the provisions of the Alaska Native Claims Settlement Act of Dec. 18, 1971, 85 Stat. 688, 43 U.S.C. §§ 1601-1624 (Supp. III 1973).

Whether village selections authorized by the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. III 1973), constitute an unwarranted vitiation of the State selection provisions of the Alaska Statehood Act, 48 U.S.C. notes prec. § 21 (1970), and of the Compact of Admission to the Union, is beyond the consideration of this Board.

State of Alaska, 19 IBLA 316 (Apr. 7, 1975)

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

A selection application by the State of Alaska must be rejected with respect to those public lands which are reserved or withdrawn from entry or other form of disposal under the public land laws of the United States and cannot be held open pending a possible future change of the status of the land.

State of Alaska, 20 IBLA 341 (June 11, 1975)

An application filed by a State under the Act of Mar. 15, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act of 1894 must be rejected where the lands are withdrawn for stock-driveway purposes, and cannot be suspended pending consideration of a petition for reclassification of the lands as suitable for selection under the Carey Act.

A grant of lands to a State under the Carey Act of 1894 is not a grant *in praesenti*, vesting title to any particular lands as of the time of passage of the Act or by relation back upon fulfillment of the conditions imposed by the Act, but the allowance or rejection of an application by a State under the Act of Mar. 15, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act is a matter wholly within the discretion of the Department; and where the lands sought to be selected by the State are embraced within a stock-driveway withdrawal made by the Secretary of the Interior under authority of law, they are not, so long as such withdrawal remains in force, subject to any claim of the State under the Carey Act.

Idaho Department of Water Resources, 21 IBLA 210 (July 31, 1975)

STATE SELECTIONS--Continued

The allowance of a State selection application furthers the discharge of the Federal obligation to fulfill the State's statutory entitlement and, generally, it will be preferred in the public interest over the discretionary application of one who does not have an entitlement of equal dignity.

C. Burglin et al., 21 IBLA 234 (Aug. 11, 1975)

The notation on land office records of a noncompetitive oil and gas lease application does not prevent the State of Alaska from selecting the land pursuant to the Alaska Statehood Act.

Yukon Service, Inc., 22 IBLA 220 (Oct. 15, 1975)

A headquarters site claim is invalid when occupancy of the site was initiated more that 90 days prior to the filing of a notice of location and an intervening State selection application has segregated the land.

William G. Fairbanks, 22 IBLA 255 (Oct. 23, 1975)

The filing of an amended Alaska State Selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Klatt, Allan D. Klatt, 23 IBLA 59 (Dec. 11, 1975)

A selection application under the Alaska Statehood Act filed in the appropriate Bureau of Land Management office for properly described land segregates the land from all appropriation based upon subsequent application or settlement and location.

John W. Eastland et al., 24 IBLA 240 (Mar. 25, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

A railroad right-of-way, granted under the Act of July 1, 1862, 12 Stat. 489, *as amended*, by Act of July 2, 1864, 13 Stat. 356, crossing a school section, does not constitute lands "otherwise disposed of by the United States" within the ambit of the school indemnity statutes. Therefore a rejection of an indemnity selection application, offering such base, is proper.

State of Wyoming, 27 IBLA 137 (Sept. 29, 1976)
83 I.D. 364

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

Idaho Department of Water Resources, 27 IBLA 302 (Oct. 26, 1976)

Lands described in a State selection application under sec. 6(b) of the Alaska Statehood Act are segregated from all forms of appropriation including location under the mining laws from the time the application is filed in the proper office of the BLM. An amendment to a pre-existing application is effective to segregate the land described in the amendment from the time it is filed.

Dennis G. Chinn, 29 IBLA 307 (Mar. 30, 1977)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

Under 43 U.S.C. § 852(a)(1) (1970), *as amended* by sec. 25 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1024 (1970), a State may select lands with geothermal potential as indemnity for base lands lost by it from its grant for common schools without a reservation to the United States of the geothermal rights therein, provided that these base lands also have geothermal potential.

Per sec. 25 of the Geothermal Steam Act of 1970, geothermal resources are treated under 43 U.S.C. § 852(a) (1970) as other leasable minerals, rather than as oil and gas, so that a State need not submit as base for indemnity selection of lands which have been classified by the Geological Survey as being within a "KGRA" (known geothermal resource area) lands which also are classified as KGRA, but instead need only submit base lands classified by GS as having geothermal potential.

Where BLM has issued a clear list giving a State title to lands selected as indemnity for lost school lands but erroneously reserving to the United States geothermal rights to these selected lands, these geothermal rights are still within the power of the United States to dispose of, and the Department still exercises jurisdiction over them, so that the Board of Land Appeals may correct BLM's error by ordering that these rights be given to the State by deleting the reservation thereof in the clear list.

Where the record indicates that there may be gross disparity between the value of lands selected by a State as indemnity for lost school lands and the value of base lands submitted by the State in support of the selection, the matter will be remanded to the BLM for revaluation of the lands. If the revaluation reveals a gross disparity, the BLM shall withhold further action until judicial resolution of the propriety of the "grossly disparate value" policy.

State of California, 33 IBLA 160 (Dec. 20, 1977)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a State's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

Janelle R. Deeter, Gary D. Deeter, Verna D. Lyons, Harry D. Lyons, 34 IBLA 81 (Feb. 22, 1978)

Joe E. Benson, 43 IBLA 136 (Sept. 28, 1979)

STATE SELECTIONS--Continued

A Bureau of Land Management decision rejecting a selection application by the State of Utah under its Miner's Hospital Grant because the land is deemed mineral in character due to a classification as valuable for oil, gas, and coal will be set aside because it failed to consider relevant statutes and regulations permitting selections of land valuable for minerals leasable under the Mineral Leasing Acts with a reservation of the minerals to the United States.

A State selection application for lands valuable for leasable minerals may be rejected where it is determined that the disposal of the surface rights will unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts and there is a proper basis in the record for such a determination which is unrefuted by the applicant. However, if there is no substantiation in the record for the determination and a State asserts error, the case will be remanded to the Bureau of Land Management to reconsider the determination, with the Geological Survey, and substantiate the basis of any future determination.

State of Utah, Department of Natural Resources, 38 IBLA 85 (Nov. 15, 1978)

Where the State is a party to decisions by the Bureau of Land Management and the State's selection applications were rejected by those decisions, under 43 CFR 4.410, the State has standing to appeal those decisions to the Board of Land Appeals.

The Alaska Native Claims Settlement Act extinguished aboriginal occupancy claims of Alaska Natives; such claims cannot serve as a bar to a State selection, nor preclude the State from challenging Native allotment applications conflicting with its selection.

Under the "functional" standard to determine administrative standing set forth in *Koniag, Inc.* v. *Andrus*, 580 F.2d 601 (D.C. Cir. 1978), *cert. denied*, 99 S. Ct. 733 (1979), the State of Alaska has standing to challenge Native allotment applications conflicting with its selection applications even if the land is within a Native village selection area under the Alaska Native Claims Settlement Act. The State has standing under Departmental regulations to initiate private contests against such conflicting Native allotment applications.

State of Alaska et al., 41 IBLA 315 (July 11, 1979)
86 I.D. 361

The State of Alaska has a sufficient interest in land by virtue of its applications for an airport conveyance or by its selection application to have standing to initiate private contests against conflicting Native allotment applications.

State of Alaska, 42 IBLA 1 (July 25, 1979)

Where the State of Alaska has filed an application to select certain land 2 years prior to the date when an applicant for a Native allotment declares that he first began his use and occupancy of that land, the segregative effect of the State selection will preclude allowance of the Native allotment as a matter of law.

The segregative effect of a State of Alaska selection application is operative on the land for which the State has applied from the date of filing, and remains in effect until the State's application is finally disposed, during which time no new rights may be initiated. The ultimate disallowance of the State's application will neither negate the segregative effect of its filing on the land, nor validate *nunc pro tunc* any claim initiated during the period when the land was so segregated.

Andrew Petla, 43 IBLA 186 (Oct. 5, 1979)

STATE TAXES

Public lands owned by the United States cannot be subjected to taxation by the State in which they are located. When Congress has prescribed the conditions upon which portions of the public domain may be alienated and has provided that upon fulfillment of certain conditions the United States shall issue patent, the land becomes taxable only after the applicant has fulfilled all conditions precedent to such conveyance. Payment of taxes to a State for Federal land does not afford the taxpayer any rights against the United States, unless specifically provided by a Federal statute.

Joseph Tosalino, August Sokotka, 42 IBLA 117 (Aug. 16, 1979)

STATUTES

The Bureau of Land Management has the authority to impose a stipulation on an oil and gas lease covering reserved minerals on patented lands, which would require archaeological investigation and excavations by lessee.

General Crude Oil Co., 28 IBLA 214 (Dec. 10, 1976)
83 I.D. 666

STATUTORY CONSTRUCTION

GENERALLY

Although there may be no general rule for distinguishing between mandatory and directory provisions, a statute should be construed according to its subject matter and the purpose for which it was enacted, and the intention of the legislature should be controlling.

To deny status as an eligible village to persons in fact entitled to that status would be an unjust and unfair denial of a right specifically granted by Congress, as evidenced in the legislative history.

Authority to Determine Eligibility of Native Villages After June 18, 1974, M-36877 (Jan. 7, 1975) 82 I.D. 14

Whether village selections authorized by the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. III 1973), constitute an unwarranted vitiation of the State selection provisions of the Alaska Statehood Act, 48 U.S.C. notes prec. § 21 (1970), and of the Compact of Admission to the Union, is beyond the consideration of this Board.

State of Alaska, 19 IBLA 316 (Apr. 7, 1975)

In providing for allocation of rents, royalties and bonuses between the United States and a State in proportion to their ownership of a mineral lease partly within and partly without a numbered school section, the Congress intended for producing mineral leases to be included within the exceptions set out in the amendatory Act of July 11, 1956, 30 U.S.C. § 870(d) (1970).

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

STATUTORY CONSTRUCTION--Continued

GENERALLY--Continued

One of the functions of the Department of Justice is to construe the laws under which other Government Departments act, 28 U.S.C. § 512 (1970), and when the Department of Justice has advised the Department of the Interior that it has construed a conflict of interest statute affecting Members of Congress and has determined that it is permissible for the spouse of a Member of Congress to hold a grazing lease for national resource lands under certain circumstances, that opinion is binding on this Department, and a grazing lease is properly issued when the applicant has satisfied the criteria set forth by the Department of Justice.

Joseph T. Kurkowski, 24 IBLA 58 (Feb. 23, 1976)

Where a statute designates the Illinois River as a potential addition to the river system, and similarly designates other rivers and their tributaries, the tributaries of the Illinois River are not included as potential additions, under the principle *inclusio unius alterius exclusio est*.

Walter D. Freeman et al., 25 IBLA 150 (June 10, 1976)

Sec. 5(b) of the Act of May 25, 1948 (62 Stat. 269) is not applicable to those tribal lands upon which the Flathead Irrigation Project's Kerr Substation and Switchyard are located.

Relocation of Flathead Irrigation Project's Kerr Substation and Switchyard, M-36735 (Supp.) (Sept. 24, 1976) 83 I.D. 346

Sec. 31 of the Mineral Leasing Act, *as amended*, 30 U.S.C. § 188 (1970), providing for the automatic termination of a lease, not containing a well capable of production of oil and gas in paying quantities, for nonpayment of the annual rental, does apply to a lease which is entitled to an extension beyond its initial 10-year term because of termination of an approved communitization agreement under 30 U.S.C. § 226(j) (1970), even though notice of the extension was not given to the lessee in time for him to receive it and return the rental so that the payment would be received by BLM no later than the 11th anniversary date of the lease.

Jack L. McClellan, Marton Majoros, 34 IBLA 53 (Feb. 16, 1978)

As to gravel, interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether gravel is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

"*Ejusdem generis*." The *ejusdem generis* rule of construction may not be invoked to exclude gravel from the scope of a reservation of "all the coal and other minerals" in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), because this rule of construction can only be effectively applied where there is a series of specific terms which define a class so that one may construe a general term by reference to that class.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978) 85 I.D. 129

When those provisions of reclamation law which are specifically incorporated by SRPA are added to the provisions of SRPA itself, they form a complete scheme which is capable of standing by itself without need to incorporate the general body of reclamation law.

When a statute is enacted as being "supplemental" to a general law, it will incorporate the provisions of that other law to the extent the provisions of the general law are not inconsistent with the supplemental statute, unless the intent is otherwise clear that Congress did not intend incorporation.

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act Projects, M-36904 (July 17, 1978) 85 I.D. 254

When interpreting Federal agreements and statutes pertaining to Indian Affairs, one must consider the legislative history, as well as surrounding circumstances and subsequent administrative practices to determine what the parties intended, and in particular, what the Indians understood the agreement to mean. Doubtful expressions are to be resolved in the Indians' favor.

Congressional intent to modify or abrogate Indian property rights must be clear and cannot be lightly inferred.

Sec. 25 of the Act of Apr. 21, 1904 (33 Stat. 189, 224), which authorized the application of the 1902 Reclamation Act to the Fort Yuma and Colorado River Reservations, and which provided for the allotment and sale of surplus irrigable lands on those reservations, was unrelated to and was not intended to effect the conditional cession provided for in the 1893 agreement and the 1894 ratifying statute.

Title to Certain Lands Within the Boundaries of the Fort Yuma (now called Quechan) Indian Reservation, M-36908 (Jan. 2, 1979) 86 I.D. 3

Subsequent to the passage of the Federal Land Policy and Management Act of 1976 (FLPMA), the Department lacked the authority to accept donations of land under the Act of July 14, 1960, which had been expressly repealed by FLPMA. Inasmuch as the actions of the Secretary under the Act of July 14, 1960, were not ministerial, the doctrine of relation cannot be used to validate, on a *nunc pro tunc* basis, an acceptance of a donation under the authority of the Act of July 14, 1960, occurring after the repeal of that Act by Congress.

Junior L. Dennis, 40 IBLA 12 (Mar. 9, 1979)

ADMINISTRATIVE CONSTRUCTION

The 2 1/2-year time limitation set forth by Congress in sec. 11(b)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610(b)(2) (1970), for the determinations of village eligibility, is an estimate of time reasonable enough to accomplish the basic purposes of that section of the Act.

Authority to Determine Eligibility of Native Villages After June 18, 1974, M-36877 (Jan. 7, 1975) 82 I.D. 14

STATUTORY CONSTRUCTION--Continued

ADMINISTRATIVE CONSTRUCTION--Continued

The administrative treatment of land as reservation land under the jurisdiction of the Bureau of Indian Affairs for many purposes is not dispositive of the status of the land in the face of clear legislation demonstrating that it was absolutely ceded, even without conflicting administrative treatment of the lands as public domain or under the jurisdiction of the Reclamation Service. The Department has the authority to resolve disputes and correct errors in the status of lands within its jurisdiction.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

In determining whether interpretation of a statute should be given prospective effect, some of the factors to be considered are whether the statute is easily susceptible to more than one interpretation; whether the interpretation being overruled has been followed since enactment of the statute; the nature of the reliance placed on the precedent by the parties; the purpose of the statute or rule in light of public policy; the harm to the parties who have relied on the precedent to their detriment; and the harm either to the Government or the public purpose.

Reclamation Law - Control of the Sale Price of Formerly Excess Lands, M-36913 (May 18, 1979)
86 I.D. 306

IMPLIED REPEALS

Sec. 25 of the Act of Apr. 21, 1904, which authorized the application of the Reclamation Act of 1902 to the Yuma Indian Reservation, did not repeal by implication sec. 17 of the Act of Aug. 15, 1894, which provided for the cession, reclamation and allotment of the Reservation, and is in no way inconsistent with the 1894 Act.

Title to Certain Land Within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

LEGISLATIVE HISTORY

To deny status as an eligible village to persons in fact entitled to that status would be an unjust and unfair denial of a right specifically granted by Congress, as evidenced in the legislative history.

Authority to Determine Eligibility of Native Villages After June 18, 1974, M-36877 (Jan. 7, 1975) 82 I.D. 14

STOCK-RAISING HOMESTEADS

An application to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-Raising Homestead Act were impliedly repealed by the Taylor Grazing Act of June 28, 1934.

Lee, 24 IBLA 308 (Apr. 14, 1976)

STOCK-RAISING HOMESTEADS--Continued

When, as a result of direct proceedings against mining claims, the Department determines that no discovery has been made, the claims must be declared null and void notwithstanding that they are located on land patented under the Stock-Raising Homestead Act and the contest was privately initiated.

Cabot Sedgwick et al. v. C. M. Parker, 27 IBLA 256 (Oct. 20, 1976)

An application filed in 1976 to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-raising Homestead Act were impliedly repealed by the Taylor Grazing Act and were expressly repealed by the Federal Land Policy and Management Act.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

As to gravel, interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether gravel is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 *et seq.* (1970), was not generally intended to give the grantee the right to use the land for mineral development and mineral development was to proceed only under the mineral laws.

"*Ejusdem generis*." The *ejusdem generis* rule of construction may not be invoked to exclude gravel from the scope of a reservation of "all the coal and other minerals" in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), because this rule of construction can only be effectively applied where there is a series of specific terms which define a class so that one may construe a general term by reference to that class.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates the Department of the Interior retaining continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

The declaration in the Surface Resources Act, 30 U.S.C. § 611 (1970), that no deposit of common varieties of gravel shall be deemed a valuable mineral deposit within the meaning of the mining laws, was not intended to operate as a conveyance, to holders of patents, of any minerals reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Gravel in a valuable deposit is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

STOCK-RAISING HOMESTEADS--Continued

A bond filed by a mining claim owner, covering lands patented under the Stock-Raising Homestead Act of Dec. 29, 1916, as amended, 43 U.S.C. §§ 291-301 (1970), need only be set in an amount to cover damages to crops, improvements, and the value of the land for grazing purposes within the limits of the mining claim. The ad damnum of the bond does not have to be sufficient to cover damages caused by a disruption of the surface owner's entire grazing operation.

Elmer Silvera et al., 42 IBLA 11 (July 25, 1979)

SUBMERGED LANDS

Federal title to land may be lost by erosion, and land which has become submerged under water is no longer subject to disposition under the Alaska Native Allotment Act. The fact that an Alaska Native may have used, occupied, and filed an application for such land when it was dry does not prevent the loss of Federal title to that land by erosion. Neither the Alaska Statehood Act nor the Submerged Lands Act prevents the passage of title to such land to the State.

Frank Holland, 41 IBLA 207 (June 27, 1979) 86 I.D. 342

The Mineral Leasing Act for Acquired Lands does not exclude from oil and gas leasing those lands underlying the Missouri River within the boundaries of the Fort Berthold Indian Reservation as established by the Treaty of Fort Laramie (1851) and the Executive Order of Apr. 12, 1870, which were reacquired by the United States from the Indian tribes. The exclusion in the Act for submerged lands refers to submerged coastal lands, as set forth in 43 CFR 3101.2-1(g).

Impel Energy Corp., 42 IBLA 105 (Aug. 16, 1979)

SUBMERGED LANDS ACT

GENERALLY

Submerged and filled tidelands passed to the State of Alaska on the date of its admission to the Union, Jan. 3, 1959. Ownership of tidelands subsequently created by avulsive action remains in those persons or entities, including the Federal Government, who held title to the land prior to the avulsive action.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

Where submerged lands were included in a withdrawal order in Alaska, which was in effect at the time the State entered the Union, even though such submerged lands were not specifically described in the withdrawal order, such submerged lands would not pass to the State at statehood pursuant to sec. 5(a) of the Submerged Lands Act.

The subsequent revocation of a withdrawal of submerged lands which prevented the State from acquiring title to such lands at statehood pursuant to sec. 5(a) of the Submerged Lands Act, has no effect on the ownership of the lands contained in the withdrawal.

Where the coastal submerged lands in the Arctic National Wildlife Refuge were segregated by an application for a withdrawal filed by the Fish and Wildlife Service in Jan. 1958, 1 year before Alaska statehood, such application operated as an express retention of the lands at statehood under the Submerged Lands Act, and prevented passage of title of the coastal submerged lands to the State.

The Effect of Public Land Order 82 on the Ownership of Coastal Submerged Lands in Northern Alaska, M-36911 (Dec. 12, 1978) 86 I.D. 151 (1979)

Federal title to land may be lost by erosion, and land which has become submerged under water is no longer subject to disposition under the Alaska Native Allotment Act. The fact that an Alaska Native may have used, occupied, and filed an application for such land when it was dry does not prevent the loss of Federal title to that land by erosion. Neither the Alaska Statehood Act nor the Submerged Lands Act prevents the passage of title to such land to the State.

Frank Holland, 41 IBLA 207 (June 27, 1979) 86 I.D. 342

The Board adopts the Solicitor's conclusion that Public Land Order No. 82 (Jan. 22, 1943) (8 FR 1599 (Feb. 4, 1943)) constituted an express retention for the United States of submerged lands when Alaska was admitted to the Union, and title to the submerged lands withdrawn by PLO No. 82 did not pass to the State of Alaska with statehood.

Regulations in 43 CFR 2650.5-1(b) deal explicitly with chargeability of acreage and implicitly with land title, establishing two categories of submerged lands not required to be selected and charged: those underlying navigable waters, and those underlying nonnavigable waters of one-half section or more.

Under regulations in 43 CFR 2650.5-1(b), Federal ownership of submerged lands does not require all such lands to be charged against a Native corporation's acreage entitlement.

Appeal of State of Alaska, 3 ANCAB 297 (July 31, 1979) 86 I.D. 361

ACCRETIONS

Submerged and filled tidelands passed to the State of Alaska on the date of its admission to the Union, Jan. 3, 1959. Ownership of tidelands subsequently created by avulsive action remains in those persons or entities, including the Federal Government, who held title to the land prior to the avulsive action.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

ABATEMENT

A refusal to grant an extension of time for abatement is not necessarily an abuse of discretion when the request for an extension was made after the abatement time had expired.

White Winter Coals, Inc., 1 IBSMA 305 (Dec. 4, 1979) 86 I.D. 675

ADMINISTRATIVE PROCEDURE

Generally

An administrative law judge may raise questions which go to the authority of the Department under the Act even if the parties fail to raise those questions.

If a party objects to any ruling of or action taken by an administrative law judge it should do so in a manner that the administrative law judge can reconsider his action in light of that objection.

It is imperative both to the just implementation of this Act and to the proper functioning of administrative review within the Department that parties cooperate with the administrative law judge's conduct of the proceeding and with his requests.

Delight Coal Corp., 1 IBSMA 186 (June 5, 1979)
86 I.D. 321

In a case on appeal, the Board bases its deliberations on the record before it.

Where the applicant for review bases his defense upon the assertion that the amount of coal removed or to be removed is less than that provided by law to constitute surface coal mining, he must prove such an assertion.

James Moore, 1 IBSMA 216 (July 20, 1979) 86 I.D. 369

In review proceedings of notices of violation and cessation orders, the burden of going forward to establish a prima facie case rests with OSM and the ultimate burden of persuasion rests with the applicant for review.

Dean Trucking Co., Inc., 1 IBSMA 229 (Sept. 11, 1979)
86 I.D. 437

Findings

The administrative law judge may frame findings of fact in any of a number of acceptable ways, but, however they are arrived at, findings must be sufficiently comprehensive and pertinent to form a basis for decision when measured against the evidence.

Dean Trucking Co., Inc., 1 IBSMA 105 (Mar. 23, 1979)
86 I.D. 201

Except in cases governed by 43 CFR 4.1187(e) or 4.1266(b)(7)(ii), a written decision or a written order confirming a ruling from the bench constitutes the initial decision. The written decision or order incorporating the ruling from the bench must comply with 43 CFR 4.1127. The only exception to this rule is when the administrative law judge both specifically states that a ruling from the bench constitutes his initial decision and fully complies with the requirements of 43 CFR 4.1127 in that oral ruling.

Delight Coal Corp., 1 IBSMA 186 (June 5, 1979)
86 I.D. 321

In review proceedings of cessation orders issued pursuant to sec. 521(a)(2) of the Surface Mining Control and Reclamation Act of 1977, there must be a determination whether the condition, practice, or violation which is the basis for the order is one which creates an imminent danger to the health or safety of the public, or

is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

Claypool Construction Co., Inc., 1 IBSMA 259 (Sept. 26, 1979)
86 I.D. 486

APPEALS

Effect of

Although, when a matter is appealed to the Board, OSM cannot take further action in the matter except to advise the Board whether the requested relief should or should not be granted, OSM can at any time move the Board to take what OSM feels is appropriate action.

White Winter Coals, Inc., 1 IBSMA 305 (Dec. 4, 1979)
86 I.D. 675

APPLICABILITY

Generally

Where excavation work has taken place and coal exposed, but no coal removed, and the landowner's intent is to create homesites and not to remove coal unless permission to do so is received from the State, the Office of Surface Mining Reclamation and Enforcement lacks jurisdiction over the land.

Squire Baker, 1 IBSMA 279 (Oct. 25, 1979)
86 I.D. 550

Enforcement Provisions

The enforcement provisions of the Act and the initial Federal regulatory program are not avoided by the failure of a person to obtain a State permit before conducting surface coal mining and reclamation operations regulated by a State.

Claypool Construction Co., Inc., 1 IBSMA 259 (Sept. 26, 1979)
86 I.D. 486

Postmining Land Use

Excavation for the purpose of obtaining coal is an activity which may be subject to regulation under the Act, even though that activity may be incidental to a postmining land use plan.

Claypool Construction Co., Inc., 1 IBSMA 259 (Sept. 26, 1979)
86 I.D. 486

ATTORNEYS' FEES

Bad Faith

An award of costs and expenses including attorneys' fees may be awarded to a permittee from OSM only if the permittee establishes that OSM took enforcement action in bad faith and for the purpose of harassing or embarrassing the permittee.

Dennis R. Patrick, 1 IBSMA 248 (Sept. 18, 1979)
86 I.D. 450

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

BACKFILLING AND GRADING REQUIREMENTS

Previously-mined Lands

The backfilling and grading requirements of 30 CFR 715.14 apply only to lands which are used, disturbed, or redisturbed in connection with or to facilitate mining or to comply with the requirements of the Act or Federal interim regulations, and do not apply to previously mined lands on which no adverse physical impact results from surface coal mining and reclamation operations conducted after the effective date of the Federal initial performance requirements.

Cedar Coal Co., 1 IBSMA 145 (Apr. 20, 1979) 86 I.D. 250

CESSATION ORDERS

A cessation order is not properly issued under sec. 521(a)(2) of the Act when there is no suggestion in the record that the cited violation was creating an imminent danger to public health or safety or was causing or could reasonably be expected to cause significant, imminent environmental harm.

White Winter Coals, Inc., 1 IBSMA 305 (Dec. 4, 1979) 86 I.D. 675

CIVIL PENALTIES

Generally

During the initial regulatory program a person may be assessed a civil penalty under 30 CFR 723.1 for violations of a permit condition, a regulation, or a provision of Title V of the Act even though he does not hold a permit from the State regulatory authority.

Delight Coal Corp., 1 IBSMA 186 (June 5, 1979) 86 I.D. 321

Hearings Procedure

The filing of an application for review of a notice of violation does not suspend the running of the period within which a petition for review of a proposed assessment of a civil penalty must be filed.

C & K Coal Co., 1 IBSMA 118 (Mar. 30, 1979) 86 I.D. 221

ENVIRONMENTAL HARM

In review proceedings of cessation orders issued pursuant to sec. 521(a)(2) of the Surface Mining Control and Reclamation Act of 1977, there must be a determination whether the condition, practice, or violation which is the basis for the order is one which creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

Claypool Construction Co., Inc., 1 IBSMA 259 (Sept. 26, 1979) 86 I.D. 486

A cessation order is not properly issued under sec. 521(a)(2) of the Act when there is no suggestion in the record that the cited violation was creating an imminent danger to public health or safety or was causing

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

ENVIRONMENTAL HARM--Continued

or could reasonably be expected to cause significant, imminent environmental harm.

White Winter Coals, Inc., 1 IBSMA 305 (Dec. 4, 1979) 86 I.D. 675

EVIDENCE

Where the evidence presented by OSM in support of a cited violation of the initial regulatory program performance standards is that the inspector relied on representations made to him in writing the violation, such evidence must be sufficient to withstand challenges to the substance of the representations made and to the authority to bind the permittee of the individual making the representations.

Island Creek Coal Co., 1 IBSMA 316 (Dec. 21, 1979) 86 I.D. 724

HEARINGS

Any objection to the location of a minesite review hearing must be made before or at the time of the minesite hearing.

White Winter Coals, Inc., 1 IBSMA 305 (Dec. 4, 1979) 86 I.D. 675

INITIAL REGULATORY PROGRAM

Generally

The Secretary of the Interior has interpreted the Surface Mining Control and Reclamation Act of 1977 through his duly promulgated interim program regulations to exclude sec. 521(a)(1) of the Act from having effect during the interim regulatory program.

Dayton Mining Co., Inc., and Plateau, Inc., 1 IBSMA 125 (Apr. 17, 1979) 86 I.D. 241

The definition of "permittee" adopted by the Secretary for the initial regulatory program in 30 CFR 700.5 includes those persons who, through ignorance or dishonesty, fail to obtain a permit before engaging in activities regulated by a State.

Delight Coal Corp., 1 IBSMA 186 (June 5, 1979) 86 I.D. 321

When an interim regulatory provision is ambiguous when applied to a particular operation, and its intended meaning is not clarified by reference to the interim regulatory provisions as a whole and other pertinent interpretive materials, that provision may be construed in favor of the entity seeking relief from its application.

Western Engineering, Inc., 1 IBSMA 202 (June 22, 1979) 86 I.D. 336

"Permittee." The definition of "permittee" adopted by the Secretary for the initial regulatory program in 30 CFR 700.5 includes those persons who fail to obtain

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

INITIAL REGULATORY PROGRAM--Continued

Generally--Continued

a State permit before conducting surface coal mining and reclamation operations regulated by a State.

Claypool Construction Co., Inc., 1 IBSMA 259 (Sept. 26, 1979) 86 I.D. 486

Performance Requirements

Applicability

The extraction of coal as an incidental part of privately financed construction is not an activity excluded, as such, from coverage by the performance requirements of the initial regulatory program.

James Moore, 1 IBSMA 216 (July 20, 1979) 86 I.D. 369

State Regulation

Compliance with State mining permit conditions does not excuse noncompliance with the initial Federal performance requirements.

Cedar Coal Co., 1 IBSMA 145 (Apr. 20, 1979) 86 I.D. 250

Regardless of whether a permittee has a mining and reclamation plan approved by the State regulatory authority before the interim regulations became effective, that plan must meet the requirements of the regulations.

Alabama By-Products Corp., 1 IBSMA 239 (Sept. 14, 1979) 86 I.D. 446

State Regulation

The initial Federal regulatory program is not applicable to a surface coal mining operation which is located on State land and which is not subject to State regulation within the scope of any of the initial performance standards.

Dennis R. Patrick, 1 IBSMA 158 (Apr. 24, 1979) 86 I.D. 266

INSPECTIONS

In the absence of extraordinary circumstances, the Board is unwilling to consider an entry made without prior presentation of credentials by an inspector to be in compliance with the requirements of 30 CFR 721.12(a).

Consolidation Coal Co., 1 IBSMA 273 (Sept. 28, 1979) 86 I.D. 523

PUBLIC HEALTH AND SAFETY

A cessation order is not properly issued under sec. 521(a)(2) of the Act when there is no suggestion in the record that the cited violation was creating an imminent danger to public health or safety or was causing or could reasonably be expected to cause significant, imminent environmental harm.

White Winter Coals, Inc., 1 IBSMA 305 (Dec. 4, 1979) 86 I.D. 675

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ROADS

Maintenance

Haul roads shall be maintained, in accordance with 30 CFR 717.17(j), by means that will prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area, to the extent possible using the best technology currently available.

In determining whether there is a violation of the haul road maintenance requirements of 30 CFR 717.17(j)(3)(i), the relevant inquiry is not whether the road's condition constituted failure to maintain it in view of its use, but whether its condition demonstrated a failure to maintain it in a manner that would prevent adverse impacts on the hydrologic balance in general and additional contributions of suspended solids to streamflow or to runoff outside the permit area in particular.

Island Creek Coal Co., 1 IBSMA 285 (Nov. 9, 1979) 86 I.D. 623

SIGNS AND MARKERS

While the initial Federal regulatory program requires that the perimeter of the permit area be clearly marked, there is no definition of permit area applicable during such program; therefore, an interpretation of 30 CFR 715.12(c) that is consonant with the spirit and purposes of the Act will be upheld.

Signs and markers, whenever required, must be durable and easily recognized.

Burgess Mining and Construction Corp., 1 IBSMA 293 (Nov. 30, 1979) 86 I.D. 656

SPOIL AND MINE WASTES

Valley and Head-of-Hollow Fills

The fact that an operator may have begun constructing a fill which obstructed, interrupted, or encroached upon a natural drainage channel or natural stream channel prior to May 3, 1978, may not excuse the operator from complying with Federal requirements for a valley fill when he subsequently continues construction of the valley fill.

Dean Trucking Co., Inc., 1 IBSMA 229 (Sept. 11, 1979) 86 I.D. 437

STATE REGULATION

Regardless of whether a permittee has a mining and reclamation plan approved by the State regulatory authority before the interim regulations became effective, that plan must meet the requirements of the regulations.

In order for the regulatory authority's approval of a permittee's use of alternative materials in place of topsoil to be timely, it must be given before alternative material is substituted for topsoil.

Alabama By-Products Corp., 1 IBSMA 239 (Sept. 14, 1979) 86 I.D. 446

SURFACE OWNER CONSENT

The Secretary may, in computing the fair market value of coal to be leased competitively under privately owned surface, assume a limited surface owner consent cost, based on losses and costs to the surface estate and operation and similar evaluations, regardless of the actual price paid or the amount which a surface owner could otherwise demand for consent.

Assumption of a limited surface owner consent cost to be used in place of actual cost in the computation of fair market value of coal to be leased competitively is necessary to ensure receipt of fair market value by the public as required by 30 U.S.C. § 201(a) (1976).

In the exercise of his discretion to lease under the Mineral Leasing Act, the Secretary has authority to decline to issue a coal lease where surface owner consent costs prevent the public from realizing a fair return on the value of the coal.

Coal Leasing Program -- Relationship of the Cost of Surface Owner Consent to Receipt of Fair Market Value for Federally Owned Coal, M-36909 (Jan. 15, 1979)
86 I.D. 28

TOPSOIL

Generally

A showing of contamination is not a necessary requirement in establishing a topsoil removal violation pursuant to 30 CFR 715.16. Protection of topsoil from contamination is merely a reason for the removal requirement, not a requirement itself.

Island Creek Coal Co., 1 IBSMA 316 (Dec. 21, 1979)
86 I.D. 724

Alternative Materials

Even when the regulatory authority has approved the use of alternative materials in place of topsoil, the alternative materials must be handled in accordance with 30 CFR 715.16(a)(4)(iii).

In order for the regulatory authority's approval of a permittee's use of alternative materials in place of topsoil to be timely, it must be given before alternative material is substituted for topsoil.

Alabama By-Products Corp., 1 IBSMA 239 (Sept. 14, 1979)
86 I.D. 446

An operator must obtain approval from a State regulatory authority before using alternative materials instead of removing, segregating, and redistributing topsoil.

Carbon Fuel Co., 1 IBSMA 253 (Sept. 25, 1979)
86 I.D. 483

Handling

Absent express approval of an alternative plan by a regulatory authority in the manner provided by law, 30 CFR 715.16 requires no less than all the available topsoil to be salvaged.

Burgess Mining and Construction Corp., 1 IBSMA 293 (Nov. 30, 1979)
86 I.D. 656

VARIANCES

Any exemption from the requirements of 30 CFR 715.17(a), concerning sedimentation ponds, must be sought from the appropriate regulatory authority.

White Winter Coals, Inc., 1 IBSMA 305 (Dec. 4, 1979)
86 I.D. 675

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS

Discharges from Disturbed Areas

Discharges from any portion of a permitted area that is disturbed in the course of the permittee's mining operations must comply with the effluent limitations contained in 30 CFR 715.17(a) of the Department's initial regulatory program.

Thunderbird Coal Corp. v. Office of Surface Mining Reclamation and Enforcement, 1 IBSMA 85 (Jan. 16, 1979)
86 I.D. 38

Disturbed Areas

Sedimentation Ponds

A sedimentation pond is a "disturbed area," as that term is defined for the purpose of 30 CFR 715.17(a) of the Department's initial regulatory program, when any portion of the permitted area which drains into the sedimentation pond has been disturbed by the permittee other than by the construction of other sedimentation ponds, roads or diversion ditches.

Thunderbird Coal Corp. v. Office of Surface Mining Reclamation and Enforcement, 1 IBSMA 85 (Jan. 16, 1979)
86 I.D. 38

Sedimentation Ponds

Any exemption from the requirements of 30 CFR 715.17(a), concerning sedimentation ponds, must be sought from the appropriate regulatory authority.

White Winter Coals, Inc., 1 IBSMA 305 (Dec. 4, 1979)
86 I.D. 675

WORDS AND PHRASES

"Permittee." The definition of "permittee" adopted by the Secretary for the initial regulatory program in 30 CFR 700.5 includes those persons who fail to obtain a State permit before conducting surface coal mining and reclamation operations regulated by a State.

Classical Construction Co., Inc., 1 IBSMA 255 (Sept. 26, 1979)
86 I.D. 486

"Topsoil." For purposes of the topsoil removal requirements of 30 CFR 715.16(a), topsoil is either all the A horizon or the A horizon plus unconsolidated material to a depth of 6 inches or all unconsolidated material where less than 6 inches of material exists.

Carbon Fuel Co., 1 IBSMA 253 (Sept. 25, 1979)
86 I.D. 483

SURFACE RESOURCES ACT

GENERALLY

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man/marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

In a proceeding under sec. 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the use and management of the surface and its resources on certain mining claims, it is incumbent upon the holder of a claim to demonstrate a discovery of a valuable mineral deposit within the claim as of the time of the Act, and also at the time of the hearing.

Under sec. 5 of the Surface Resources Act of July 23, 1955, the effect of a decision that no mineral discovery has been shown is to permit the Government to manage and dispose of the vegetative and other surface resources without disturbing claimant's right to develop his mining claims by using the subsurface and surface to the extent necessary to conduct his mining operations.

United States v. A. O. Bartell, 31 IBLA 47 (June 23, 1977)

The declaration in the Surface Resources Act, 30 U.S.C. § 611 (1970), that no deposit of common varieties of gravel shall be deemed a valuable mineral deposit within the meaning of the mining laws, was not intended to operate as a conveyance, to holders of patents, of any minerals reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

In a competitive materials sale, submission of the required 10 percent deposit in cash with the sealed bid is permissible under the regulations and not a ground for rejection of the highest bid. Therefore, a protest against acceptance of the bid for that reason is properly denied.

Roy Blake, 38 IBLA 151 (Dec. 5, 1978)

APPLICABILITY

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

HEARINGS

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, a hearing will not be ordered and an appraisal will not be disturbed in the absence of an offer of specific substantial evidence that the determination is incorrect.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

VERIFIED STATEMENT

A verified statement required under sec. 5 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 613 (1970), is properly rejected when the mining claim in connection with which it is filed, is declared to be null and void ab initio because it was located on land withdrawn from mineral location for power purposes prior to the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 *et seq.* (1970), and the land was segregated for purposes other than power development at that time and continuously thereafter.

Roy B. Cummins, 26 IBLA 223 (Aug. 17, 1976)

SURPLUS PROPERTY

(*See also* Federal Property and Administrative Services Act--if included in this Index.)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Paradox Oil and Gas Co., 22 IBLA 287 (Oct. 22, 1975)

Lands acquired for military purposes and subsequently disposed of as surplus property under the Federal Property and Administrative Services Act with a reservation of mineral rights to the United States are not subject to leasing under the Mineral Leasing Act for Acquired Lands. Oil and gas leases on such land may issue only under the provisions of the Federal Property and Administrative Services Act, which requires competitive bidding.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

SURVEYS OF PUBLIC LANDS

GENERALLY

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands require extension or correction of past surveys.

Where one who protests the performance and acceptance of a survey of land, identified by the cadastral engineer making the survey as public domain land, offers probative evidence that changes arose because of avulsion rather than accretion and so the land is not in fact Federally owned, a hearing will be ordered to receive and consider such evidence and to ascertain the facts.

Joe S. Dent and Dolores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Where statute and regulation provide that lands selected by the State of Alaska must be surveyed before patent can issue, but no similar requirement has been imposed as a precondition to the conveyance of lands selected pursuant to the Alaska Native Claims Settlement Act, the State's contention that this disparity is discriminatory will not afford a basis for reversing a decision which rejected a State selection application in favor of a conflicting Native village selection.

State of Alaska, 19 IBLA 178 (Mar. 18, 1975)

Although the Secretary of the Interior may survey any public lands which have been erroneously omitted from a survey, a plat of survey, once accepted, is presumed to be correct and will not be disturbed except upon clear proof of fraud or gross error; in the absence of such proof an application for survey of omitted land is properly rejected.

George C. Matthews, 19 IBLA 215 (Mar. 28, 1975)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys.

A patent of land from the United States conveys only land which is surveyed, and when the surveyors have carried a survey only to a certain line, a grantee may not successfully challenge the correctness of their action or claim land beyond that line under a patent issued in accordance with that survey.

Generally, the meander line is not to be treated as a boundary and when the United States conveys a tract of land by patent referring to an official plat which shows the tract to be bordering on a navigable body of water, the patent conveys all the land to the water line. However, there are three situations in which meander lines will serve as the boundary of a conveyance or grant, rather than a water body: namely, where there is (1) fraud or (2) gross error shown in the survey, or (3) where the facts and circumstances disclose an intention to limit a grant or conveyance to the actual traverse lines.

The Bureau of Land Management acted appropriately in surveying an omitted area of 18.17 acres of land as compared to the original area of surveyed land of 17.52 acres where it found that area of omitted land to be too large to be regarded as merely a technical difference from the original survey. Such a discrepancy is unquestionably a large enough omission to be classified as either gross error or fraud in the original survey.

A survey of a previously unsurveyed portion of an island, proved to have been in existence in 1876 when an original survey was conducted in the area, is proper and shall be officially filed where the record shows that the plat of survey reflects the true location of the island on the surface of the earth and was conducted in accordance with both the Manual of Survey Instructions and the special instructions for this conditional survey.

Chester H. Ferguson et al., 20 IBLA 228 (May 13, 1975)

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

A protestant against the filing of a survey plat bears the burden of proof, *i.e.*, the risk of nonpersuasion, to show why the plat should not be accepted, and the applicant State has the burden of demonstrating that land is swamp and overflowed in character. The protestant against the filing of a survey plat who claims that title to the land passed to the State under the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), is properly assessed with the burden of proof, *i.e.*, the risk of nonpersuasion, in the proceeding.

The survey of an offshore island without the use of 18.6-year mean high tide data, which governs boundary disputes between private upland and tideland owners, is proper; the 18.6-year lunar cycle tide data does not govern meander lines established in public land surveys.

Meander of an offshore island is ordinarily based on a mean high tide determined by the vegetative line upon the soil in accordance with the Bureau of Land Management's *Manual of Surveying Instructions*.

The meandering of the public land of an offshore island is properly based on a mean high tide line established at the vegetative line upon the soil, in accordance with the provisions of the Bureau of Land Management's *Manual of Surveying Instructions*, and a protest against the filing of a plat of survey based on such a mean high tide line is properly rejected.

Demonstration that the field notes accompanying the plat of survey inaccurately or incompletely recite the history of the lands surveyed does not require rejection of the survey or field notes, when it is not disputed that the field notes accurately describe the evidence of the history of settlement and use visible during examination and survey, and when it is concluded that the survey itself was properly executed.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

There can be no "valid existing right" in a claimant of a headquarters site on land withdrawn by Public Land Order No. 4582 unless a notice of location or application to purchase had been filed in accordance with the Act of Apr. 29, 1950. The filing of an application for a survey of omitted land did not by itself create any preference rights to the land.

Notices of location for headquarters sites must be accepted for filing by the authorized Bureau of Land Management office if the land has been subject to location during the preceding 90 days. The fact that land had been omitted from the original survey is not a valid reason for the Bureau of Land Management to refuse to record a properly filed notice of location for a headquarters site.

Ray W. Ferguson, 22 IBLA 160 (Sept. 30, 1975)

The amount of acreage contained in an oil and gas lease may be reduced where, upon resurvey of the land, it is determined that the area under lease is actually smaller than the area shown by the original survey.

Grace M. Brown et al., 24 IBLA 301 (Apr. 1, 1976)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys.

Title to an island omitted from the original survey but existing at that time in a nonnavigable river remains in the United States and is subject to survey despite the disappearance of the channel separating the island from the lots which were formerly riparian.

R. A. Mikelson, 26 IBLA 1 (July 6, 1976)

Where the Bureau of Land Management orders a resurvey of a section to identify the boundaries of public land within the section, a private landowner may protest the resurvey and, where the protesting landowner points up a serious contradiction between the resurvey and the topographic calls accompanying the original plat, it is proper to remand the case for a fact hearing.

Domenico A. Tussio et al., 30 IBLA 92 (Apr. 29, 1977)

In determining what land is conveyed under patents or grants of public land bordering a meandered watercourse, the general rule is that the waterline itself, not the meander line, constitutes the boundary. There is an exception where the meander line may constitute the boundary between lands omitted from the survey and the watercourse if fraud or gross error is shown in the survey. This exception is only applicable to limit the boundary of the surveyed lots on the side of the watercourse where the omitted land is shown. It does not apply to a lot on the opposite side of the watercourse from the omitted land so as to pass title to the omitted land with title to the lot on the opposite side. The waterline would remain the actual boundary of that lot.

Mable M. Farlow, 30 IBLA 320 (June 7, 1977) 84 I.D. 276

It is within the power of the Bureau of Land Management, as delegated by the Secretary of the Interior, to retrace any survey it has made whenever it becomes necessary to the determination of a question pending before it for decision involving rights to the public land.

Stanley A. Phillips et al., 31 IBLA 342 (July 22, 1977)

Where there is no ambiguity or confusion in the description of lands in an oil and gas lease offer because it includes a complete description of land in a section in a particular township by legal subdivisions embracing unnumbered survey lots or fractional subdivisions, as well as a description of unnumbered lots in accord with current survey numbering practice, the lot designation may be disregarded, and the regulatory requirement that lands in an oil and gas lease offer which have been surveyed under the public land rectangular system must be described by legal subdivision, section, township, and range, is satisfied, even though the official plat of survey does not designate or number the fractional subdivisions as lots.

David H. Yates, 33 IBLA 175 (Dec. 20, 1977)

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Where both an original survey prior to the issuance of a patent and a dependent resurvey after issuance indicate that a homestead patent has issued on land within a national forest, the patent is invalid notwithstanding that the Federal Government may not by means of a second survey affect property rights acquired under an official survey.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

A dependent resurvey by BLM which does not follow the Manual of Surveying Instructions (1973) constitutes gross error and must be canceled. Such gross error includes conducting a dependent resurvey in which data in the official plat of survey of the township and its field notes are ignored and changing corners established by the original survey to the prejudice of bona fide property rights acquired in good faith in reliance on the integrity of the original survey.

Domenico A. Tussio et al., 37 IBLA 132 (Oct. 4, 1978)

The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified corners and other acceptable points of control, and second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey. Corners established by the original survey should be located, if possible, by considering all the relevant evidence and not simply one or two factors.

Ethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

The primary rule which the courts apply in construing and interpreting a conveyance where the location of the boundary lines is uncertain by reason of inconsistent or conflicting descriptive calls in the conveyance is that the intention of the parties controls and is to be followed. Where the calls for the location of boundaries to land are inconsistent, calls to monuments, natural or artificial, are of paramount importance and will prevail over all other calls inconsistent therewith. Calls to boundaries are of secondary importance, and courses and distances must be altered if, as given, they will not reach the designated boundary. Calls of course take precedence over distances, so that where it is necessary to either change direction to reach a boundary or else reduce or extend the prescribed distance, the distance must yield to the course. The recital of quantity or area of land conveyed or retained will be least influential.

United States v. Leroy S. Johnson et al., 39 IBLA 337 (Feb. 28, 1979)

An error in omitting to survey an island in a navigable stream does not divest the United States of title or interpose any obstacle to surveying it at a later time. An island within the public domain in a navigable stream and actually in existence both at the time of the survey of the banks of the stream and also upon the admission to the Union of the State within which it is situated remains the property of the United States. Even though omitted from survey, such land does not become part of the fractional subdivisions on the opposite banks of the stream.

Joseph Tomalino, August Sobotka, 42 IBLA 117 (Aug. 16, 1979)

SURVEYS OF PUBLIC LANDS--Continued

AUTHORITY TO MAKE

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands require extension or correction of past surveys.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys.

Chester H. Ferguson et al., 20 IBLA 224 (May 13, 1975)

R. A. Mikelson, 26 IBLA 1 (July 6, 1976)

The Secretary of the Interior is authorized and under a duty to determine what lands are public lands and to survey such lands. Neither the Acts admitting Florida into the Union, nor the Reconstruction Act of Mar. 2, 1867, divested the Secretary of the Interior of that authority regarding islands in the State of Florida, nor divested the United States of title to any public lands in the State.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

Where the Bureau of Land Management orders a resurvey of a section to identify the boundaries of public land within the section, a private landowner may protest the resurvey and, where the protesting landowner points up a serious contradiction between the resurvey and the topographic calls accompanying the original plat, it is proper to remand the case for a fact hearing.

Domenico A. Tussio et al., 30 IBLA 92 (Apr. 29, 1977)

The Secretary of the Interior may cause to be made such resurveys or retracements of the rectangular system of surveys of public lands as he may deem essential to mark the boundaries of the remaining public lands.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

It is within the power of the Bureau of Land Management, as delegated by the Secretary of the Interior, to retrace any survey it has made whenever it becomes necessary to the determination of a question pending before it for decision involving rights to the public land.

Stanley A. Phillips et al., 31 IBLA 342 (July 22, 1977)

DEPENDENT RESURVEYS

A class 1 color of title application for lands classified upon dependent resurvey as omitted swamp and overflowed lands must be rejected when the applicants' 20-year period of peaceful adverse possession under color of title had not been established at the date title vested in the State under the provisions of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970).

An appeal from a decision rejecting a color of title application will stay the running of the 60-day period,

SURVEYS OF PUBLIC LANDS--Continued

DEPENDENT RESURVEYS--Continued

provided by the decision appealed from, for filing affidavits and evidence in support of arguments that the dependent resurvey of the land applied for erroneously classified the land as swamp and overflowed in character.

Paul E. and Ray L. Sievers, 22 IBLA 318 (Nov. 10, 1975)

Restoration of a lost corner by means of proportionate measurement in accordance with the record of the original survey is the proper procedure in a dependent resurvey where there is a lack of conclusive evidence as to the location of the original corner.

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Henry O. Woodruff, 24 IBLA 190 (Mar. 18, 1976)

Stanley A. Phillips et al., 31 IBLA 342 (July 22, 1977)

The Secretary of the Interior may cause to be made such resurveys or retracements of the rectangular system of surveys of public lands as he may deem essential to mark the boundaries of the remaining public lands.

The dependent resurvey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of the original survey and other recognized and acceptable points of control, and, second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. Where an appellant who protests a dependent resurvey presents evidence which questions whether, in fact, the Bureau of Land Management accurately located a quarter section corner and three certified surveyors agree with appellant, a hearing will be ordered for resolution of the factual issue of location of the quarter corner.

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Frank Lujan, 30 IBLA 95 (Apr. 29, 1977)

A dependent resurvey by BLM which does not follow the Manual of Surveying Instructions (1973) constitutes gross error and must be canceled. Such gross error includes conducting a dependent resurvey in which data in the official plat of survey of the township and its field notes are ignored and changing corners established by the original survey to the prejudice of bona fide property rights acquired in good faith in reliance on the integrity of the original survey.

Domenico A. Tussio et al., 37 IBLA 132 (Oct. 4, 1978)

SURVEYS OF PUBLIC LANDS--Continued

DEPENDENT RESURVEYS--Continued

The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified corners and other acceptable points of control, and second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey. Corners established by the original survey should be located, if possible, by considering all the relevant evidence and not simply one or two factors.

Where there exist factual questions about the location of section and subdivisional corners in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

In challenging the Government resurvey, appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

Where, at a hearing, a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed.

Frank Lujan, 40 IBLA 184 (Apr. 5, 1979)

SWAMPLANDS

A protestant against the filing of a survey plat bears the burden of proof, i.e., the risk of nonpersuasion, to show why the plat should not be accepted, and the applicant State has the burden of demonstrating that land is swamp and overflowed in character. The protestant against the filing of a survey plat who claims that title to the land passed to the State under the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), is properly assessed with the burden of proof, i.e., the risk of nonpersuasion, in the proceeding.

In a hearing held to determine whether lands were swamp and overflowed at the time of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), the parties asserting the State's title fail to meet their burden of proof when the evidence submitted indicates that the mangrove area claimed as swampland is in fact below the line of mean high tide, and was properly delineated from the upland by the meander line.

The United States is not estopped to assert title to, survey, or deny the swamp and overflowed character of public lands constituting offshore islands in Florida either by Departmental inaction on the State's swampland application, or by inclusion of the islands in a swampland selection list, or by the survey protestants' adverse chain of title and claims of occupancy and use.

Demonstration that the field notes accompanying the plat of survey inaccurately or incompletely recite the history of the lands surveyed does not require rejection of the survey or field notes, when it is not disputed that the field notes accurately describe the evidence of the history of settlement and use visible during examination and survey, and when it is concluded that the survey itself was properly executed.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

SWAMPLANDS--Continued

A class 1 color of title application for lands classified upon dependent resurvey as omitted swamp and overflowed lands must be rejected when the applicants' 20-year period of peaceful adverse possession under color of title had not been established at the date title vested in the State under the provisions of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970).

An appeal from a decision rejecting a color of title application will stay the running of the 60-day period, provided by the decision appealed from, for filing affidavits and evidence in support of arguments that the dependent resurvey of the land applied for erroneously classified the land as swamp and overflowed in character.

Paul H. and Fay L. Sleeper, 22 IBLA 318 (Nov. 10, 1975)

Land, which in its natural condition, quite apart from any overflow of water, is uncultivable, is not land of the character described in the grant of Swamplands to the respective States.

State of California, 29 IBLA 132 (Feb. 23, 1977)

Although a grant to a State pursuant to the Swamp Land Act of 1849 or 1850 is a grant in praesenti, in that the State is immediately vested with an inchoate equitable title, the legal title does not pass until the Secretary has determined that the land is swamp in character and otherwise available for disposition.

Where a State swampland selection has been rejected on the ground that the land selected has been disposed of, but in fact that land was available to the State, the judgment is valid and binding until set aside. Since the Secretary has jurisdiction to determine whether the land selected is available, he has jurisdiction to decide erroneously. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land to a color of title applicant's predecessor, and an adverse right has intervened.

A color of title claim stemming from a tax sale by a State in 1900 to a color of title applicant's predecessor in interest on which taxes have since been paid is an adverse claim sufficient to warrant the Department in not setting aside an 1853 decision erroneously rejecting a swampland selection or from not giving a new State selection priority over the color of title application.

John Stuart Hunt, Sherman M. Hunt, 31 IBLA 304 (July 22, 1977) 84 I.D. 421

Where a State selects land as swamp and overflowed within the meaning of the Swamplands Acts and relies on field notes which predate the Acts to establish the character of the land, those field notes must show conclusively that the land is swamp and overflowed. In analyzing such pre-Act field notes, the Department will examine all descriptive references contained in the notes, including types of terrain and vegetation and their relative location.

It is generally stated that grants of swamp and overflowed lands under the 1849 and 1850 Swampland Acts were in praesenti and gave the States inchoate title to such lands that was perfected, as of the dates of the Acts, when the lands were identified and legal title passed to the State under the procedure established by the Acts.

SWAMPLANDS--Continued

In order for a State to receive legal title to a swampland selection, the Secretary of the Interior or his delegate must determine that the land is swamp in character and available for disposition under the grant. An erroneous decision that selected land is unavailable because it was sold prior to the selection is valid and binding until set aside. The erroneous decision will not be set aside where the State did not appeal and the decision has remained unchallenged for over 100 years, the State itself sold the land at a tax sale to the predecessor in interest of a color of title applicant, and an adverse right, *i.e.*, a class 2 color of title application, has intervened.

White Castle Lumber and Shingle Co., Ltd., 32 IBLA 129 (Sept. 12, 1977)

TAYLOR GRAZING ACT

GENERALLY

An application to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-Raising Homestead Act were impliedly repealed by the Taylor Grazing Act of June 28, 1934.

Leo, 24 IBLA 308 (Apr. 14, 1976)

Under the terms and conditions in 43 CFR 4125.1-1(i) placed by the Department on the continued effectiveness of grazing leases, as allowed by sec. 15 of the Taylor Grazing Act, a grazing lease may be canceled in its entirety in order to use the land included in it as a wildlife habitat.

Bill W. Fraser, 30 IBLA 277 (June 1, 1977)

An application filed in 1976 to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-raising Homestead Act were impliedly repealed by the Taylor Grazing Act and were expressly repealed by the Federal Land Policy and Management Act.

Daniel A. Anderson, 31 IBLA 162 (July 1, 1977)

A district manager's decision reached in the exercise of administrative discretion pursuant to the Taylor Grazing Act of 1934 may be regarded as arbitrary or capricious only where it is not supportable on any rational basis and the burden is on the appellant to show by substantial evidence that the decision is improper. A district manager's decision not to reissue a grazing lease for a certain area until that area is fenced and to reduce appellant's AUM's accordingly rests on a rational basis where the facts show that this unfenced area adjoins the bombing range and grazing thereon could result in trespass on the bombing range, inconsistent with the use of the range.

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

The Taylor Grazing Act created no reserved water rights.

The management programs mandated by Congress in such Acts as the Taylor Grazing Act and FLPMA require the appropriation of water by the United States in order to assure the success of the programs and carry out the objectives established by Congress.

TAYLOR GRAZING ACT--Continued

GENERALLY--Continued

FLPMA, the Taylor Grazing Act, the CEC Act, and other statutes permit the United States to appropriate water for the diverse purposes found in the various statutes.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

TIDELANDS

The survey of an offshore island without the use of 18.6-year mean high tide data, which governs boundary disputes between private upland and tideland owners, is proper; the 18.6-year lunar cycle tide data does not govern meander lines established in public land surveys.

Meander of an offshore island is ordinarily based on a mean high tide determined by the vegetative line upon the soil in accordance with the Bureau of Land Management's *Manual of Surveying Instructions*.

In a hearing held to determine whether lands were swamp and overflowed at the time of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), the parties asserting the State's title fail to meet their burden of proof when the evidence submitted indicates that the mangrove area claimed as swampland is in fact below the line of mean high tide, and was properly delineated from the upland by the meander line.

The meandering of the public land of an offshore island is properly based on a mean high tide line established at the vegetative line upon the soil, in accordance with the provisions of the Bureau of Land Management's *Manual of Surveying Instructions*, and a protest against the filing of a plat of survey based on such a mean high tide line is properly rejected.

Virgil Lopez et al., 21 IBLA 33 (June 17, 1975)

Where a notice of location is filed for a trade and manufacturing site and such notice is declared unacceptable for recordation because the lands containing the business improvements are tidelands owned by the State of Alaska, the decision must be set aside and the case remanded when the record does not show that there ever was a survey conducted of such lands to determine whether they are, in fact, tidelands owned by the State.

Submerged and filled tidelands passed to the State of Alaska on the date of its admission to the Union, Jan. 3, 1959. Ownership of tidelands subsequently created by avulsive action remains in those persons or entities, including the Federal Government, who held title to the land prior to the avulsive action.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

The Mineral Leasing Act for Acquired Lands does not exclude from oil and gas leasing those lands underlying the Missouri River within the boundaries of the Fort Berthold Indian Reservation as established by the Treaty of Fort Laramie (1851) and the Executive Order of Apr. 12, 1870, which were reacquired by the United States from the Indian tribes. The exclusion in the Act for submerged lands refers to submerged *coastal* lands, as set forth in 43 CFR 3101.2-1(g).

Intel Energy Corp., 42 IBLA 105 (Aug. 16, 1979)

TIMBER SALES AND DISPOSALS

A request for extension of a timber sale contract is properly denied where the purchaser has not shown that its delay in cutting and removal was due to causes beyond its control. A business depression is no excuse within the "beyond control" exceptions contained in the exculpatory clause of a contract.

Yuba River Lumber Co., Inc., 19 IBLA 65 (Feb. 25, 1975)

Where a contract for the sale of vegetative resources (pine nuts) contains a disclaimer of warranty by the vendor (Government) as to the quantity of resources sold, the parties are deemed to have contracted on the assumption that there was doubt as to the quantity, and the risk with respect to such factor must be considered to have been assumed by the purchaser as one of the elements of the bargain. Thus, the fact that the quantity of the resource available for harvesting turned out to be less than was expected at the time of contracting is not a basis for a claim to a refund.

Where appellant alleges a loss of vegetative resources (pine nuts) which he purchased occurring subsequent to the time of contracting and prior to severance, due to severe and unusual damage by birds, and the contract of sale provides that the risk of loss shall remain in the Government and not pass to purchaser until such vegetative resources have been severed or extracted, appellant's claim for a refund is governed by the risk of loss provision rather than a disclaimer of warranty as to quantity contained in a separate part of the contract.

Alma LeBaron, Jr., 25 IBLA 164 (June 14, 1976)

Where a purchaser in a timber sale contract alleges that there is a discrepancy between the volume of timber estimated by the Bureau of Land Management and the volume removed by the purchaser, the shortage may be explained by the fact that BLM's cruising and scaling standards are substantially different from those used by the Columbia River Log Scaling and Grading Bureau which estimated the volume recovered by the purchaser.

A timber sale is a lump-sum sale where the purchase price is not contingent on the volume of timber to be recovered. Where the timber sale contract specifically disclaims warranties of quantity and quality, the purchaser may not recover for an alleged shortage in the volume on the theory that the Government was negligent in estimating the volume of timber, or that there was a mutual mistake in fact in regard to the volume, or that such disclaimers are unconscionable.

La Bo Lumber Co., Inc., 30 IBLA 202 (May 20, 1977)

The Bureau of Land Management, under 43 CFR 5442.3, has the authority to reject bids submitted for timber sales where it rationally determines that rejection is in the Government's interest.

Cabax Mills, 32 IBLA 225 (Sept. 20, 1977)

A party seeking a partial refund of the purchase price under the risk of loss provision of a contract for the cash sale of vegetative resources pursuant to the Materials Act of July 31, 1947, must present substantial evidence of the quantity of resources lost which otherwise would have been harvested.

Alma D. LeBaron, Jr., 32 IBLA 299 (Sept. 29, 1977)

The Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1702(h) (West Supp. 1978), providing for sustained yield management of timber resources, and 16 U.S.C. §§ 594, 594-1 (1970), which direct a policy of preserving forest resources from insect infestation and damage, envisage that the Department is under an obligation to protect timber from such ravages, including without limitation, the sale of timber so affected.

A decision by a district office to proceed with a proposed timber sale, which was made after consideration of all relevant facts, and which decision is supported by the record, will not be disturbed in the absence of a showing that the decision is clearly in error.

Where a proposed Federal timber sale would allow the cutting of trees on a 162-acre tract pursuant to a properly promulgated decision of the Director of the Bureau of Land Management concerning the allowable cut in that district, such sale does not, by itself, constitute a major Federal action significantly affecting the quality of the human environment such as will require the preparation of an environmental impact statement prior to the sale.

George Jalbert et al., 39 IBLA 205 (Feb. 2, 1979)

The right of appeal to the Board is limited to parties to a case adversely affected by a decision of BLM. A person protesting a timber sale does not become a party to a case until such time as BLM has issued a final decision adverse to his or her interests. The case is ordinarily ripe for appeal only when an adverse decision is made on the protest.

The receipt of timber sale bids by BLM pursuant to an advertised sale and subsequent to the filing of a protest of the sale, does not constitute an irrevocable commitment to complete the sale where all bidders acknowledge that the final decision to award the sale contract is contingent upon adjudication of the protest and the decision reached on any proper appeal therefrom. Hence, receipt of bids by BLM does not prejudice the rights of protestants to have their protest ruled upon and any proper appeal heard.

Elaine Mikels et al., 41 IBLA 305 (July 3, 1979)

BLM is obligated in preparing Environmental Analysis Records (EAR's) preliminary to a determination as to whether a full environmental impact statement for a proposed Federal action will be prepared pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (1976), to develop a reviewable record reflecting a consideration of all relevant factors. In the case of a proposed Federal timber sale the purely speculative threat of erosion or threat to the watershed caused by the absence of forest regeneration or a proposed trails system where the sale area is deemed to be of negligible recreational value are properly considered in a decision denying a protest of the sale.

A proposed Federal timber sale does not violate the principle of multiple use embodied in the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), where it involves Oregon and California revested land committed by the Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1976), to dominant use management for commercial forestry.

Elaine Mikels et al., 44 IBLA 51 (Nov. 19, 1979)

TITLE

GENERALLY

The Secretary of the Interior does not have authority under the Right-of-Way Oil and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 *et seq.* (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the mineral estate was included within the grant to the patentee.

Amerada Hess Corp., 24 IBLA 360 (Apr. 27, 1976)
83 I.D. 194

In public land law, the term "equitable title" is used to describe the interest held by an entryman who, upon full compliance with requirements of the law, has rights in the land superior to all other claims, and is entitled to issuance of patent by the Federal Government, which hold only legal title to the land.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976)
83 I.D. 619

REAL PROPERTY

Where material involving a prior mineral reservation on acquired lands is first submitted on appeal, and the effect of a State statute and State court decree is in issue, it is appropriate to remand the case to the BLM State Office for further consideration.

A. M. Henderson, 30 IBLA 8 (Apr. 4, 1977)

TOWNSITES

The date determinative of the rights of occupants of Alaska Native townsite land is the date of final subdivisional survey, not the date of patent; if, at the date of final subdivisional survey, the lots are occupied by non-Natives as well as Natives, the lots will be disposed of under both the non-Native and Native townsite provisions.

City of Klawock v. P. H. Andrew et al.; City of Klawock v. State of Alaska, Department of Highways, 24 IBLA 85 (Feb. 25, 1976)
83 I.D. 47

An appeal to the Board of Land Appeals will be dismissed where the enactment of legislation renders moot the questions on appeal.

Gibbonsville Townsite, 30 IBLA 74 (Apr. 18, 1977)

An appeal to the Board of Land Appeals will be dismissed where the enactment of the Federal Land Policy and Management Act renders moot the questions on appeal.

Silver Peak Townsite (Trustee), 30 IBLA 357 (June 10, 1977)

TOWNSITES--Continued

Authority to dispose of land within Alaska railroad townsites under 43 U.S.C. § 975b (1970) was repealed by sec. 704(a) of the Federal Land Policy and Management Act of 1976.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

R.S. 2387, 2388 and 2389, 43 U.S.C. §§ 718-720 (1976), were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and any transfer of land for a townsite within a National Forest after the effective date of FLPMA, Oct. 21, 1976, must be made under authority of sec. 213 of that Act. The filing of an application under other statutes prior to the enactment of FLPMA does not constitute a valid existing right which would survive FLPMA.

Townsite of Liberty, 40 IBLA 317 (Apr. 30, 1979)

Alaska Natives who occupied lots in a Native townsite on date of approval of final subdivisional townsite survey, prior to Oct. 21, 1976, are entitled to receive deeds thereto from the townsite trustee.

Leona R. Strang (Supp.), 43 IBLA 156 (Sept. 28, 1979)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789, so that no rights under the townsite laws could be derived from occupancy commenced after Oct. 21, 1976.

Stu Mach, 43 IBLA 306 (Oct. 17, 1979)

TRESPASS

GENERALLY

Where timber on Federal land is cut for commercial purposes by one who knows that no patent has issued and who occupies the land either as a mining claimant or as one who is engaged in attempting to defeat the interests of third parties by adverse possession, the taking of the timber constitutes a willful trespass against the interests of the United States. If the taking occurs after a State court has issued its decree quieting title in the timber-taker against all third parties but not against the United States, the taking will nonetheless constitute a trespass if it is determined that legal title had not passed from the United States by operation of law.

Southern Pacific Transportation Co., Jay E. Eggal; Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 5, 1976)
83 I.D. 1

The term "grazing trespass" as used in the context of the Federal Range Code refers to the grazing of livestock on Federal land without an appropriate license or permit or in violation of the terms and conditions of a license or permit, and not to any other special meaning ascribed under other laws and circumstances if inconsistent with this usage.

Where a permittee was found to have committed repeated grazing trespasses, a fine of twice the commercial rate for foraging such animals was warranted in accordance with the regulations.

TRESPASS--Continued

GENERALLY--Continued

Where a grazing trespass is willful, grossly negligent, or repeated, disciplinary action in the form of suspension, reduction, or revocation, or denial of renewal of a grazing license or permit may be warranted. The regulatory factors, together with any mitigating circumstances, should be considered to determine the extent of the reduction or other disciplinary action.

In determining whether grazing trespasses are "willful," intent sufficient to establish willfullness may be shown by proof of facts which objectively show that the circumstances do not comport with the action that the trespasser acted in good faith or innocent mistake, or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

When the holder of a grazing lease is found to have violated regulations and the terms of his lease because his cattle have trespassed on Federal land, his lease may be canceled when lesser sanctions have proved to be of no effect or when the nature of the violation demands such severity. However, a decision canceling a lease will be set aside where the district manager relied upon alleged trespasses of which the lessees had no notice and which occurred after a show cause notice had issued, and the case will be remanded for further proceedings.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976)
83 I.D. 269

Where the number of cattle grazing on the Federal range exceeds the number allowed by license and such excess is attributable solely to appellants' lack of control over their cattle and their lack of diligence in taking corrective action after being informed by the Bureau that the excess existed, a finding of willful trespass is warranted.

Cesar and Robert Siard, 26 IBLA 29 (July 8, 1976)

A mining claim void at initio may be a proper basis for a conveyance under the Mining Claims Occupancy Act, but pursuant to 30 U.S.C. § 706 (1970) trespass damages should ordinarily be assessed.

Feliciano Y. Jimenez, Margarita R. Jimenez, 30 IBLA 82 (Apr. 27, 1977)

One who grazes livestock in a grazing allotment without authorization prior to the issuance of a license commits a grazing trespass.

Where there is a final administrative determination of the assessment of damages for a grazing trespass by a licensee, no license or permit should thereafter be issued or renewed until payment of the assessed amount.

Pursuant to the Property Clause of the U.S. Const. art. IV, § 3, cl. 2, Congress has enacted the Taylor Grazing Act, 43 U.S.C. § 315 *et seq*. (1970), and other statutory authority which empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and to determine whether or not an individual has committed a trespass.

There is no constitutional right to a jury trial in an administrative proceeding such as a grazing trespass hearing.

TRESPASS--Continued

GENERALLY--Continued

Where cattle are admitted to an allotment at the beginning of the usual grazing season but prior to the issuance of a license for that season, and payment is later made by a check which recites that it is "payment in full for 1975 grazing fee," the Bureau of Land Management may properly deposit the check, allotting part of the proceeds for the grazing license for the rest of the season, and deposit the remainder of the proceeds in a suspense account pending resolution of the trespass. Such action indicates that the check was not accepted in settlement of the trespass damages, and cashing the check does not constitute an accord and satisfaction of the trespass damages.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977)
84 I.D. 475

An assertion by an alleged trespasser that he holds the right to graze and enclose Federal range must be documented to rebut the Government's prima facie case of trespass.

The grantee of a right-of-way for irrigation or drainage purposes may not fence the right-of-way unless it is necessary to protect the grantee's use. Where the necessity of protecting an irrigation reservoir from incursion by cattle did not appear on the record, and the fence was not so located as to serve that purpose, fencing the reservoir constituted a trespass.

Joe Stewart, 33 IBLA 225 (Dec. 28, 1977)

A person intending to occupy land has a duty to ascertain its owner and to gain his consent to utilization prior to such occupancy. A person cited for a previous similar trespass for which he paid damages may properly be deemed to be a willful trespasser. Under Arizona law, punitive damages for willful trespass are permissible, and the imposition of triple damages for a willful trespass is not inappropriate.

Mountain States Telephone & Telegraph Co., 34 IBLA 154 (Mar. 10, 1978)

Where there has been an unauthorized use of the public lands, BLM may assess damages against the trespasser and serve him with a demand for payment thereof, prior to turning the matter over to the Department of Justice for initiation of judicial proceedings.

Gold Mountain Logging Co., 34 IBLA 326 (Apr. 25, 1978)

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates the Department of the Interior retaining continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

Under 43 CFR 9239.3-2(e), the repetitive nature of grazing trespasses coupled with a negligent failure of licensee to take corrective action supports a finding of willful trespass.

On appeal from a show cause proceeding under 43 CFR 9239.3-2(e), a requirement for ear-tagging of cattle recommended by a district manager and imposed by an

TRESPASS--Continued

GENERALLY--Continued

administrative law judge will be set aside where the grazer objected thereto and was not accorded proper opportunity to offer evidence thereon. 43 CFR 4112.3-2(a)(4).

Calvin C. Johnson, 35 IBLA 306 (June 2, 1978)

On appeal, an assessment of damages made by BLM for timber trespass will not be disturbed where neither appellant's contentions nor the record prove that BLM determination was in error.

David Robinson, 36 IBLA 386 (Sept. 5, 1978)

The Board of Land Appeals will not exercise its de novo review authority to deny applications for Alaska grazing leases on the basis of trespass where (1) trespass was not cited as a reason for denial of the applications in the decision under appeal, (2, the record does not provide a clear basis for determining the applicant's responsibility for the trespass, and (3) there is no record of compliance with the procedures specified in 43 CFR 9239.0-9(b).

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

Where the alleged trespasser makes no allegations of a specific and substantial nature regarding whether or not a trespass has in fact occurred, the procedure authorized by 43 CFR 9239.3-2(c)(4) limiting a hearing "to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass" does not result in a denial of due process.

A hearing on the issue of whether or not a trespass was willful or not clearly willful is authorized by 43 CFR 9239.3-2(c)(4) because a finding on this issue affects the rate at which the value of the forage consumed shall be computed pursuant to 43 CFR 9239.3-2(c)(2).

In determining whether grazing trespasses are willful, intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Since a grazing trespass is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Evidence is insufficient to support a finding of a willful trespass where it fails to show that the alleged trespasser intended to disregard the regulation prohibiting trespass or that he was plainly indifferent to its requirements or that he acted with gross neglect of a known duty.

Where the administrative law judge does not make a finding as to whether a trespass was willful or not clearly willful, the Board of Land Appeals may make this finding based upon the record as if it were sitting as trier of fact.

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(3) do not violate due process.

The Property Clause of the United States Constitution art. IV, § 3, cl. 2, gives Congress the power over the public lands "to control their occupancy and use, to

TRESPASS--Continued

GENERALLY--Continued

protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them." When Congress so acts, the Federal legislation necessarily overrides conflicting State laws under the Supremacy Clause. U.S. Constitution art. IV, cl. 2.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

A notice to cease trespass and an order to remove improvements from the public lands are proper where appellant has been occupying public lands while operating a well service for 7-8 years without proper authorization.

James E. Billings, 38 IBLA 353 (Dec. 22, 1978)

Where there has been an unauthorized use of the public lands, BLM may assess damages against the trespasser and serve him with a demand for payment thereof, prior to turning the matter over to the Department of Justice for initiation of judicial proceedings. Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect.

Outdoor Adventure River Specialists, Inc., 41 IBLA 132 (June 14, 1979)

Past trespass, trespass damages, and trespass settlements may properly be considered in determining whether trespasses are repeated for the purpose of computing the damages to be assessed.

The Taylor Grazing Act, 43 U.S.C. §§ 315a-315r (1970), and other statutory authority empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and whether or not an individual has committed a trespass.

Bureau of Land Management v. Harris Brothers, 42 IBLA 48 (July 31, 1979)

MEASURE OF DAMAGES

Where it has been determined that a grazing trespass on the Federal range is clearly willful, the value of the forage consumed shall be computed and assessed at $4 per animal unit month, or twice the commercial rate if such amount is higher. Where the commercial rate is $4.90, the assessment of damages shall be at the rate of $9.80 per animal unit month.

Cesar and Robert Siard, 26 IBLA 29 (July 8, 1976)

Under existing regulations, where a grazing trespass is not clearly willful, damages are to be computed at the rate of $2 per AUM of Federal forage consumed or the commercial rate, whichever is greater.

When 33 percent of the available forage in a grazing allotment is on Federal land and the remainder is on private land, it is appropriate to find that 33 percent of the forage consumed by cattle throughout the allotment was Federal forage, in the absence of evidence to the contrary.

Bureau of Land Management v. Ross Babcock, 32 IBLA 174 (Sept. 15, 1977) 84 I.D. 475

TRESPASS--Continued

MEASURE OF DAMAGES--Continued

Arizona Revised Statutes § 37-502, which provides for damages in civil actions for trespass on State lands, does not apply to cases involving right-of-way trespass on Federal lands located in Arizona.

A person intending to occupy land has a duty to ascertain its owner and to gain his consent to utilization prior to such occupancy. A person cited for a previous similar trespass for which he paid damages may properly be deemed to be a willful trespasser. Under Arizona law, punitive damages for willful trespass are permissible, and the imposition of triple damages for a willful trespass is not inappropriate.

Mountain States Telephone & Telegraph Co., 34 IBLA 154 (Mar. 10, 1978)

Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect.

Gold Mountain Logging Co., 34 IBLA 326 (Apr. 25, 1978)

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, a hearing will not be ordered and an appraisal will not be disturbed in the absence of an offer of specific substantial evidence that the determination is incorrect.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978) 85 I.D. 129

Where record shows willful trespass on Federal lands located in Oregon, applicable law, as mandated under 43 CFR 9239.0-8, for measure of damages is found in Oregon Revised Statutes 105.810, which prescribes treble damages.

Proper computation under Oregon Revised Statutes 105.810 of damages for willful timber trespass begins with assessment of actual damages, which are measured by difference between market values of pertinent land before and after severance of trees. Ordinarily, the market value of the trespass timber will reflect the value of the actual damage to the public land. Actual damages are then trebled, and from this amount is subtracted an allowance for such salvage as BLM by its own diligence realized or should have realized. The sum allowed in mitigation of damages is that which may be appropriate in a given case.

David Robinson, 36 IBLA 386 (Sept. 5, 1978)

In determining whether grazing trespasses are willful, intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

TRESPASS--Continued

MEASURE OF DAMAGES--Continued

Where the evidence as to specific trespass indicates that of a number of cattle counted some were located on private intermingled land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

Where there has been an unauthorized use of the public lands, BLM may assess damages against the trespasser and serve him with a demand for payment thereof, prior to turning the matter over to the Department of Justice for initiation of judicial proceedings. Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect.

Outdoor Adventure River Specialists, Inc., 41 IBLA 132 (June 14, 1979)

Where the evidence shows that the commercial rate for forage ranged from $2.50 to $9.50 per AUM, an Administrative Law Judge's computation of damages, using $3.50 as the base figure, cannot be said to be unreasonable under 43 CFR 9239.3-2 (1976).

Bureau of Land Management v. Harris Brothers, 42 IBLA 48 (July 31, 1979)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

GENERALLY

A hearing will not be held on a relocation assistance appeal where the facts are not in dispute and resolution of the appeal rests primarily upon an interpretation of law and where it does not appear that any additional evidence would be produced at a hearing to warrant any change in the decision from which the appeal is taken.

Uniform Relocation Assistance Appeal of South Cold Springs Friends Band Church, 1 OHA 110 (Apr. 14, 1975)

Uniform Relocation Assistance Appeal of Mrs. Blanche Schnuck, 3 OHA 65 (Apr. 10, 1979)

The Act does not provide for the replacement of business property condemned by and acquired by the United States and the Park Service has no authority to provide other park land as a replacement for the acquired property.

A claim for damage incidental or otherwise to real property remaining in the landowner after the acquisition of part of his property by the United States is properly denied on the basis that the Act and implementing regulations do not provide for such damage or incidental damage payments.

Uniform Relocation Assistance Appeal of S. S. Shedd, 1 OHA 125 (June 20, 1975)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

GENERALLY--Continued

Land purchase contracts which involve negotiations and agreement between the parties are transactions separate and distinct from relocation assistance payments and benefits under the Act which are made administratively by acquiring agencies in accordance with administrative regulations and procedures established under provisions of the Act, and neither the price for which an appellant's property was acquired by voluntary conveyance nor the accuracy of appraisals and the soundness of determinations involving just compensation paid to others whose property was similarly acquired by voluntary conveyance to the United States for the same project are reviewable upon appeal.

Uniform Relocation Assistance Appeal of John E. Houston, 1 OHA 157 (Aug. 8, 1975)

Claims for reimbursement for travel time to and from replacement property to sign options for the purchase of replacement property and to accompany a carpenter for the purposes of estimating building costs are properly denied on the basis that the Act and implementing regulations do not provide for such payment.

A claim for reimbursement for travel time to check on legal matters regarding replacement property is properly denied on the basis that the Act and implementing regulations do not provide for such payments.

A claim for reimbursement for travel time to bank to get money to make payment on replacement property is properly denied on the basis that the Act and implementing regulations do not provide such payments.

A claim for reimbursement for cost of paying neighbor to guard personal property or a claim for reimbursement for appellants' time spent guarding their property is properly denied on the basis that the Act and implementing regulations do not provide for such payments.

A claim for reimbursement for travel time to meet with attorney and judge for a pretrial conference held in conjunction with the trial which related to the condemnation case involving the acquired land is properly denied on the basis that the Act and implementing regulations do not provide for such payments.

A claim for reimbursement for travel time and legal expenses incurred in perfecting the appellants' appeal under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, are properly denied on the basis that the Act and implementing regulations do not provide for such payments.

An appealed case will not be remanded to the Director of the acquiring bureau where there are facts sufficient to support a final determination of the case.

Uniform Relocation Assistance Appeal of William and Mary Danneman, 1 OHA 170 (Sept. 18, 1975)

A claim for reimbursement for increased interest payments with respect to a replacement farm property is properly denied on the basis that the Act and implementing regulations did not provide for such payments.

Uniform Relocation Assistance Appeal of S. R. Jennings, 1 OHA 218 (Sept. 19, 1975)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

GENERALLY--Continued

Where appellants moved from acquired property prior to the effective date of the Act they are not displaced persons within the meaning of the Act and they are not eligible to receive relocation assistance benefits under the Act.

Uniform Relocation Assistance Appeal of Harold W. and Willomene Olsen, 1 OHA 221 (Sept. 24, 1975)

A claim for reimbursement for the cost of a survey of the remainder of appellant's land after acquisition by United States of part of appellant's land is properly denied on the basis that the Act and implementing regulations do not provide for such payment.

Uniform Relocation Assistance Appeal of Carl A. Lundberg, 1 OHA 226 (Oct. 14, 1975)

A claim for reimbursement for travel time and legal expenses incurred in perfecting the appellants' appeal under the Relocation Assistance and Real Property Acquisition Policies Act of 1970 is properly denied on the basis that the Act and implementing regulations do not provide for such payments.

An appeal case will not be remanded to the Director of the acquiring bureau where there are facts of record sufficient to support a final determination of the case.

Uniform Relocation Assistance Appeal of Edward and Josephine Kobbs, 1 OHA 229 (Nov. 13, 1975)

Under the facts alleged the coal mining operations conducted by Peabody Coal Co. within the Navajo Indian Reservation and Navajo-Hopi Joint Use Area in Arizona were neither acquisitions nor programs or projects undertaken by Federal agency or with Federal financial assistance within the meaning of sec. 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646 (42 U.S.C. § 4601 *et seq.*), so as to allow the appellants' benefits under the Act.

Uniform Relocation Assistance Appeal of Numerous Navajo Persons Who Reside on Black Mesa in Arizona, 1 OHA 252 (Mar. 15, 1976)

Where act authorizing Department of the Interior to accept donation of real property requires the property to be vacant before acceptance of donation former tenants are not entitled to relocation benefits.

Uniform Relocation Assistance Appeal of Sidney Gelb, 2 OHA 59 (Sept. 22, 1976)

Benefits under the Act and implementing regulations do not include reimbursement for costs of field surveys, property descriptions and maps, pertaining to lands to be retained by the displaced person upon acquisition by the United States of a portion of his lands.

Uniform Relocation Assistance Appeal of Mr. George P. Leonard, 2 OHA 135 (June 22, 1977)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

GENERALLY--Continued

Payments and benefits provided by Title II of the Act are made administratively in accordance with regulations and procedures established under provisions of the Act and are transactions separate and apart from land purchase contracts involving negotiations and agreement between the parties; accordingly, the amounts payable for relocation assistance benefits and for property acquisitions are not affected one by the other.

Uniform Relocation Assistance Appeal of Mr. Barry Wayne Martin, 2 OHA 169 (Mar. 30, 1978)

Uniform Relocation Assistance Appeal of Mr. and Mrs. Robert L. Burnett, Jr., 3 OHA 1 (Nov. 6, 1978)

Payments and benefits provided by Title II of the Act are made administratively by the acquiring agencies in accordance with administrative regulations and procedures established under provisions of the Act and are transactions separate and apart from land purchase contracts involving negotiations and agreement between the parties; accordingly, the amounts payable for relocation assistance benefits and for property acquisitions are not affected one by the other.

Uniform Relocation Assistance Appeal of Iolyn J. and Ruth J. Hinkle, 2 OHA 206 (Sept. 6, 1978)

To the extent that any information given by Park Service representatives may have suggested to the claimants that relocation assistance benefits would be awarded them in the amount of $10,000, such advice was erroneous and cannot serve as a basis for creating any rights in the claimants which are not authorized by law.

Uniform Relocation Assistance Appeal of Charlie F. and Jimmy W. Sanders, 3 OHA 73 (May 24, 1979)

ADMINISTRATIVE REVIEW AND APPEALS

Protestants will not be denied benefits to which they may be entitled under the Relocation Act for failure to meet procedural requirements in submitting their protest on appeal where the issue of their eligibility is inextricably a part of the determination on appeal concerning the eligibility for such benefits of other persons who have appealed properly.

Uniform Relocation Assistance Appeal of Marvin L. Nunes & Co. (A Partnership of Mrs. Tessie D. Nunes Brazil and Mr. Marvin L. Nunes); Appeal of Mr. Marvin L. and Mrs. Vivian H. Nunes (Tenants); and Protest of Mr. Domingos and Mrs. Navare Machado (Tenants), 2 OHA 35 (Sept. 9, 1976)

UNIFORM REAL PROPERTY ACQUISITION POLICY

Expenses Incidental to Transfer of Title to the United States

Real property taxes referred to in sec. 303(3) of the Act and implementing regulations refer only to the pro rata portion of real property taxes allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is earlier.

The Uniform Relocation Assistance Appeal of Mrs. Eve I. Rich, 1 OHA 121 (June 5, 1975)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM REAL PROPERTY ACQUISITION POLICY--Continued

Expenses Incidental to Transfer of Title to the United States--Continued

Expenses incidental to transfer of title to the United States, reimbursable under § 303(1) of the Act and implementing regulations, do not include attorneys' fees and costs in establishing guardianship for the purpose of effecting transfer of title to the United States of lands owned by minor children.

Uniform Relocation Assistance Appeal of Mrs. Joyce B. Borsellino, Guardian for Leroy Albert Borsellino, Salvadore Anthony Borsellino, and Ruthellyn Borsellino, Minor Children, 2 OHA 8 (May 11, 1976)

Deferred leasing brokerage commission, payable out of monthly rentals for the unexpired term of a lease of a building on acquired lands, are not reimbursable as expenses incidental to transfer of title to the United States. Such expenses being related to the business use of the property are properly borne by the owners of the property as business related expenses.

Uniform Relocation Assistance Appeal of H. Park Solomon and Louis Silverman, 2 OHA 21 (June 14, 1976)

A claim for closing cost is properly denied as to that portion of the claim which is determined to be a finance charge under the Truth and Lending Act (Pub. Law 90-321).

Uniform Relocation Assistance Appeal of Mr. and Mrs. Frank Matney, 2 OHA 92 (Oct. 4, 1976)

Where the record shows reimbursement was allowed by the National Park Service to the condemnees for the pro rata portion of real property taxes allocable to the period of the calendar year remaining after vesting of title to the lands in the United States, such condemnees having been obligated by court order to pay all of the real property taxes for the year concerned out of the condemnation award for the lands, the allowance being fair and reasonable for expenses necessarily incurred incidental to transfer of title to the real property to the United States will be affirmed.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Timothy G. Lewis, 3 OHA 79 (June 27, 1979)

Uniform Relocation Assistance Appeal of Mr. and Mrs. Marvin E. Zeller, 3 OHA 82 (June 27, 1979)

A claim under sec. 303(3) of the Act for reimbursement of expenses for a pro rata portion of real property taxes allocable to the period of the calendar year remaining after vesting of title to the lands in the United States will be disallowed where such expenses are not shown to have been necessarily incurred by the condemnee(s) from whom the lands were acquired by the United States, condemnee(s) being obligated by court order to pay taxes on the lands for the portion of the year preceding the Government's acquisition of the property.

Uniform Relocation Assistance Appeal of Ms. Doris V. Brammer, 3 OHA 85 (July 5, 1979)

Uniform Relocation Assistance Appeal of Mr. and Mrs. Ervin P. Landis, 3 OHA 89 (July 5, 1979)

Uniform Relocation Assistance Appeal of Mr. and Mrs. Richard C. Scussel, 3 OHA 93 (July 13, 1979)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM REAL PROPERTY ACQUISITION POLICY--Continued

Expenses Incidental to Transfer of Title to the United States--Continued

Where a deferred tax incurred because land was conveyed to the United States was not taken into account in the purchase price, that tax is a reimbursable expense under 42 U.S.C. § 4653(1) (1976).

Uniform Relocation Assistance Appeal of Boise Cascade Corp., 3 OHA 97 (July 31, 1979)

Penalty costs provided for in a land sales contract, assuring that the sellers (mortgagees) would receive the total amount in any premature payment of the indebtedness secured by the mortgage, are not prepayment penalty expenses reimbursable under § 303(2) of the Act as expenses incidental to transfer of title to the United States.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Gerald L. Abercrombie, 3 OHA 104 (Aug. 9, 1979)

Where the record shows reimbursement was allowed by the National Park Service to the condemnee for the pro rata portion of real property taxes allocable to the period of the calendar year remaining after vesting of title to the lands in the United States, the allowance, being fair and reasonable for expenses necessarily incurred incidental to transfer of title to the real property to the United States, will be affirmed.

Uniform Relocation Assistance Appeal of Mr. Robert H. Hosick, 3 OHA 127 (Aug. 23, 1979)

UNIFORM RELOCATION ASSISTANCE

Generally

Persons who had moved from their dwelling on real property acquired by the United States and discontinued farming operations on the lands and who were residing elsewhere at the time negotiations were initiated for the purchase of the lands and had been residing elsewhere for more than 180 days prior to initiation of such negotiations, are not persons who moved or discontinued a farm operation on the acquired lands as a result of the acquisition of the real property by the United States; and, therefore, they are not displaced persons entitled to relocation assistance benefits within the meaning of the law and the implementing regulations.

Uniform Relocation Assistance Appeal of Bobby Wayne Jennings and Helen Jennings, 1 OHA 78 (Jan. 7, 1975)

The purchase price for property acquired by the Government and relocation assistance benefits are separate and independent of each other and in no case should employees of the Government attempt to convince any person to sell his property to the Government for less than it is worth by offering relocation assistance benefits as an added inducement.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Daniel W. Walters, 1 OHA 265 (Jan. 12, 1976)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Generally--Continued

A person who had moved from her dwelling on real property acquired by the United States and was residing elsewhere at the time negotiations were initiated for the purchase of the lands is not a person who moved from the acquired property as a result of its acquisition by the United States; and, therefore, that person is not a displaced person entitled to relocation assistance benefits within the meaning of the law and the implementing regulations.

Uniform Relocation Assistance Appeal of Elizabeth B. White, M.D., 2 OHA 203 (Aug. 30, 1978)

Tenants who had moved from real property acquired by the United States and were residing elsewhere at the time negotiations were initiated for the purchase of the property are not persons who moved from the acquired property as a result of its acquisition by the United States; and, therefore, they are not displaced persons entitled to relocation assistance benefits within the meaning of the law and implementing regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Scott McDonald, 3 OHA 39 (Feb. 1, 1979)

Moving and Related Expenses

Generally

Benefits under the Act and implementing regulations do not include reimbursement for moving and related expenses in removing a house and a barn from the acquired lands where those structures were purchased as part of the realty acquired by the United States and they were removed under authority of a provision in the deed of conveyance which reserved to the grantor for a certain term the right to the use and occupancy of said buildings and the right to remove said buildings from the land without damage to the land itself.

Uniform Relocation Assistance Appeal of Fritz and Lucille J. Ackley, 1 OHA 163 (Sept. 2, 1975)

For the purposes of determining whether or not appellants are entitled to payment for expenses incurred in searching for a replacement business location, the question of whether one is engaged in a trade or business is one of fact to be determined by the totality of the evidence presented.

A claim by appellant for reimbursement for his own time spent with moving appraisers is properly denied on the basis that the Act and implementing regulations do not provide for such payment.

Claims for reimbursement for time spent disassembling or assembling equipment or supervising movers in loading or unloading where professional mover is paid for such services but appellant gratuitously performs same are properly denied on the basis that the Act and implementing regulations do not provide for such payment.

A claim by appellants for reimbursement for their own time placing their belongings under cover at acquired site is properly allowed where commercial movers quit job without explanation leaving property exposed and it is necessary to cover appellants' property in order to prevent rain or vandalism damage.

A claim by appellant for reimbursement for his own time disassembling wiring, removing electrical hookups, removing water pipes, and removing underground wiring for lights is properly allowed where commercial mover was not hired to do electrical or plumbing work and this work was necessary to move the appellants' personal property.

Claims for the cost of improvements to the replacement dwelling other than those improvements required by law are properly denied on the basis that the regulations implementing the Act prohibit the payment of such claims.

Uniform Relocation Assistance Appeal of William and Mary Danneman, 1 OHA 170 (Sept. 18, 1975)

For the purposes of determining whether or not appellants are entitled to payment for expenses incurred in searching for a replacement farm location, the question of whether the acquired farm operation contributed materially to the appellants' support is one of fact to be determined by the totality of the evidence presented.

Uniform Relocation Assistance Appeal of Edward and Josephine Kobbs, 1 OHA 219 (Nov. 13, 1975)

A claim for moving and related expenses involved in packing and unpacking household furnishings herself, by a displaced person who is not otherwise employed outside her home, is properly reduced to conform with the Federal minimum wage for such work where it appears that the amount claimed exceeds the probable cost of such services by a commercial mover and no evidence has been presented which would justify allowance of a higher amount as actual reasonable expenses incurred by the displaced person in such activity.

Uniform Relocation Assistance Appeal of Sergeant and Mrs. Michael H. Ireland, 1 OHA 256 (Dec. 3, 1975)

A determination of ineligibility for relocation assistance benefits will be reversed and the cases will be remanded for further adjudication of the claims for benefits where the evidence of record, including that assembled in a hearing on appeals in the matter, shows that the claimants are persons eligible for benefits as persons who were displaced from a farm operation and from rental housing on the farm property as a result of acquisition of the real property by the United States, despite the fact that their displacements occurred before the expiration of a reserved term of use and occupancy of a portion of the property.

Uniform Relocation Assistance Appeal of Marvin L. Nunes & Co. (A Partnership of Mrs. Tessie D. Nunes Brazil and Mr. Marvin L. Nunes); Appeal of Mr. Marvin L. and Mrs. Vivian H. Nunes (Tenants); and Protest of Mr. Domingos and Mrs. Navare Machado (Tenants), 2 OHA 35 (Sept. 9, 1976)

A claim for moving and related expenses involved in packing household furnishings, by a displaced person who is otherwise employed outside her home and who seeks reimbursement for time lost from such employment as well as costs involved in hiring substitute workers, will be reduced to an amount representing the claimant's wages, computed at the hourly rate of pay, for such time lost from work as the record indicates was required for the packing services, where it appears that the amount claimed exceeds the probable cost of such services by a commercial mover and no evidence has been presented which would warrant allowance of a higher amount as actual reasonable expenses incurred by the displaced person in such activity.

Uniform Relocation Assistance Appeal of Donald F. and Sharon L. Peters, 2 OHA 97 (Nov. 22, 1976)

A claim for actual moving expenses of farm and sawmill operation will be allowed where claimants prove the actual cost of movement and the cost of moving is not in excess of the reasonable value of the equipment moved.

Uniform Relocation Assistance Appeal of Wayne and Icelene Blackwell, 2 OHA 117 (May 3, 1977)

A claim under sec. 202(a)(1) of the Act, for reimbursement of actual costs incurred in moving timber from acquired lands, will be reduced to the amount estimated by the claimant as reasonable costs for such moving of personal property where the actual costs are shown by the record to be in excess of reasonable costs for such moving.

Where the evidence shows timber was cut for present marketing purposes immediately prior to the acquisition of the lands by the United States, and was marketed within a few months thereafter, it is not to be regarded as a stockpile item similar to those referred to in sec. 114-50.601-1(b)(3).

A claim for reimbursement for the fair market value of residual timber abandoned on acquired lands upon discontinuance of a logging business will be allowed under sec. 202(a)(2) of the Act where the record evidence shows the cost of moving the timber would be uneconomical.

Uniform Relocation Assistance Appeal of Mr. Alden E. Allen, 2 OHA 123 (June 13, 1977)

A claim for moving and related expenses under sec. 202(a) of the Act, involving personalty removed from an apartment rental business on acquired lands by the displaced owners of the business themselves, is properly limited to probable costs involved in a commercial move of such property to the location to which it was first moved, in the absence of evidence which would justify allowance of a higher amount as actual reasonable expenses incurred by the displaced persons as moving and related expenses with respect to such property.

Uniform Relocation Assistance Appeals of Bernard W. and Ruth W. Bowman, 2 OHA 142 (Aug. 8, 1977)

A claim for reimbursement for the cost of meals on the day of moving a mobile home trailer from a rental site on acquired lands to a replacement rental site elsewhere is properly denied on the basis that the Act and the Department's implementing regulations do not provide for such payment.

Uniform Relocation Assistance Appeal of Mrs. Lona Halles, 2 OHA 156 (Oct. 17, 1977)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

A person who entered into occupancy of a dwelling or real property after its ownership had passed to the United States is properly held to be ineligible for reimbursement of moving costs and related expenses under sec. 202 of the Act.

Uniform Relocation Assistance Appeal of Mr. James Dearing, 2 OHA 181 (June 21, 1978)

Uniform Relocation Assistance Appeal of Virginia Whitlock, 3 OHA 77 (June 18, 1979)

Where the record shows the claimant's move from a rented apartment dwelling on property acquired by the United States occurred prior to the date when negotiations were initiated by the United States with the owners of the property for its acquisition, the claimant is properly held to be ineligible for reimbursement of moving expenses under sec. 202 of the Act.

Uniform Relocation Assistance Appeal of Mr. Dennis F. Neuschwanger, 2 OHA 183 (June 22, 1978)

Where the record shows expenses for electrician and plumber services were incurred as costs for adding facilities to the replacement dwelling rather than as costs for reestablishment and reconnection of facilities, they are not reimbursable as actual reasonable expenses incurred in relocating personal property under sec. 202(a) of the Act and the Department's implementing regulations.

Withdrawal, at the hearing, of a claim for cost of meals on the day of moving to the replacement dwelling will be accepted since the Act and the Department's implementing regulations do not provide for reimbursement of such expenses.

Reimbursement for time lost from work to supervise commercial movers is not allowable under the Act and Department's implementing regulations in the absence of evidence establishing the necessity for allowing a higher amount than that involved in the commercial move of the personal property concerned.

Uniform Relocation Assistance Appeal of Mr. and Mrs. John C. Muldowney, 3 OHA 47 (Mar. 16, 1979)

A displaced person is entitled to reimbursement for property lost in the process of moving only to the extent the loss did not occur through his own fault or neglect.

Uniform Relocation Assistance Appeal of James S. Johnson, 3 OHA 131 (Aug. 29, 1979)

Sec. 114-50.601-2 of Title 41 CFR requires the Government to reimburse a dairy farm operation displaced under the Act for improvements constructed on the replacement site if they are required by law, regardless of whether construction of similar improvements on the acquired site would have been required in the absence of acquisition.

As used as a modifier for "improvements" in 41 CFR 114-50.601-2, the term "required by law" can include

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

the most practicable and efficacious of alternative systems for complying with the law so long as the price therefor is not clearly unreasonable.

If the State requires certain improvements on property and will subject the property's owner to injunctive, civil, or criminal penalties in their absence regardless of injury, then those improvements are "required by law" as that phrase is used in 41 CFR 114-50.601-2; improvements designed only to limit the owner's speculative tort liability are not.

Uniform Relocation Assistance Appeal of H. L. Hynes Co., et al., 3 OHA 152 (Nov. 9, 1979)

Moving Expense Allowance

Generally

Allowances for moving expenses and for dislocation, under § 202(b) of the Act, are authorized only to persons whose occupancy on the acquired lands was lawful.

Uniform Relocation Assistance Appeal of Mr. Frank Wright, 3 OHA 121 (Aug. 14, 1979)

Payment for Moving Expenses

Generally

A claim for the cost of moving nursery stock consisting of unsevered plants and trees is properly denied under regulation which precludes expense of moving improvements to real property where, under applicable State law, nursery stock is considered real property until it is severed.

Uniform Relocation Assistance Appeal of William and Mary Danneman, 1 OHA 170 (Sept. 18, 1975)

A claim for personal property lost, stolen or damaged (not caused by the fault or neglect of the displaced person, his agent or employees) in the process of moving where insurance to cover such loss or damage is not available was properly allowed under Interim Regulation 8.A.(7).

Uniform Relocation Assistance Appeal of Edward and Josephine Kobbs, 1 OHA 229 (Nov. 13, 1975)

A claim for rent for interim housing for a period of time between the dislocation and relocation is properly denied where claimants' interim housing is owned by the claimants.

A claim for storage of personal property is properly denied where claimants continued to store property after they had acquired replacement property and storage was no longer necessary.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Frank Matney, 2 OHA 92 (Oct. 4, 1976)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Payments in Lieu of Moving and Related Expenses

Fixed Payment(s)

Generally

In determining average annual net earnings regulations state that net earnings shall not be reduced by compensation paid by business or farm operations to the owner, his spouse, or his dependents means compensation actually paid and not the value of services rendered without paid compensation.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Harold T. Hall, 2 OHA 102 (Nov. 22, 1976)

Partial Taking of Farm Operation

A claim for a fixed payment in lieu of actual moving and related expenses is properly disallowed in the case of a partial acquisition of a farm operation where the farm met the definition of a farm operation prior to the acquisition and the property remaining after the acquisition also meets that definition.

Uniform Relocation Assistance Appeal of David Martin Grantham, 1 OHA 130 (July 2, 1975)

Uniform Relocation Assistance Appeal of S. H. Jennings, 1 OHA 218 (Sept. 19, 1975)

A claim for a fixed payment under sec. 202(c) of the Act, in lieu of moving and related expenses under sec. 202(a) of the Act, is properly disallowed in the case of a partial acquisition of a farm operation where the farm met the definition of a farm operation prior to the acquisition and the property remaining after the acquisition also meets that definition.

Uniform Relocation Assistance Appeal of Mr. Johnny H. Thorp, 2 OHA 24 (July 2, 1976)

Taking of Business Operation

Displaced business owner may claim reimbursement for property abandoned because of the uneconomical cost of moving or property sold because the business is discontinued under sec. 202(a) of the Act or a fixed payment in lieu thereof under sec. 202(c) of the Act but not both.

In computing average annual net earnings of business operation for purposes of determining the amount of fixed relocation payment to which the claimant is entitled under sec. 202(c) of the Act by reason of displacement from the business operation, the utilization of the last 1-year period of operation, rather than the last 2 years, should be used for establishing such earnings where there is a wide disparity between the earnings of the last year of operation of the business and the year preceding if it is further shown that the business has been very recently expanded in capacity and to use the earnings for the last year would result in more equitable treatment for the displaced owner of the business.

Uniform Relocation Assistance Appeal of S. S. Shedd, 1 OHA 125 (June 20, 1975)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Payments in Lieu of Moving and Related Expenses --Continued

Fixed Payment(s)--Continued

Taking of Business Operation--Continued

A claim for a fixed relocation business payment in lieu of actual moving and related expenses is properly disallowed where the record shows the property did not qualify as an ongoing business operation at the time of its acquisition nor for a period of approximately 15 years prior to that time.

Uniform Relocation Assistance Appeal of John E. Houston, 1 OHA 157 (Aug. 8, 1975)

Where the record indicates that an apartment rental business, comprised of two apartment buildings, was operated as a single business, the displaced owner of such business is properly limited to one loss of business claim in lieu of moving and related expenses in connection with displacement from the business.

Uniform Relocation Assistance Appeal of Ms. Dorothea C. Lennox, 2 OHA 18 (June 14, 1976)

Determinations of eligibility for fixed payments under sec. 202(c) of the Act, in lieu of moving and related expenses under sec. 202(a) of the Act, will be reversed and the cases will be remanded for further appropriate action, including repayment of benefits already allowed the claimant under sec. 202(c) of the Act, where the record evidence is insufficient to establish the claimant's entitlement to such benefits, and the claimant, on appeal, has failed to furnish the evidence required for a determination of the proper amount, if any, to which he may be entitled under the law and implementing regulations, after due notice of such requirement.

Uniform Relocation Assistance Appeal of Mr. Richard P. Grummon, 2 OHA 113 (Apr. 29, 1977)

A claim for a fixed payment under sec. 202(c) of the Act, for loss of an apartment rental business on acquired lands, in lieu of moving and related expenses under sec. 202(a) of the Act, is properly disallowed where the record shows the displaced owners of the business also owned and operated other rental properties, including another apartment rental building, in the same business.

Uniform Relocation Assistance Appeals of Bernard W. and Ruth W. Bowman, 2 OHA 142 (Aug. 8, 1977)

A fixed payment in lieu of actual reasonable moving and related expenses is properly allowed for the minimum sum of $2,500, specified in the Act, where the record shows the business was operated at a loss for the 2 taxable years immediately preceding the year in which the Government acquired the property, all else being regular.

Uniform Relocation Assistance Appeal of Iolyn J. and Ruth J. Hinkle, 2 OHA 206 (Sept. 6, 1978)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Payments in Lieu of Moving and Related Expenses --Continued

Fixed Payment(s)--Continued

Taking of Business Operation--Continued

A claim for the minimum fixed payment provided under sec. 202(c) of the Act for displacement from a business, in lieu of actual reasonable moving and related expenses under sec. 202(a) of the Act, is properly denied where the record shows the business was essentially discontinued and not an on-going business operation during the 2 taxable years preceding the year in which the United States acquired the leasehold interest of the claimant in the real property on which the business had been conducted previously.

Uniform Relocation Assistance Appeal of Mr. Clair J. Bird, 3 OHA 69 (Apr. 20, 1979)

A claim for a fixed payment under § 202(c) of the Act for loss of a business on acquired lands, in lieu of moving and related expenses under § 202(a) of the Act, was properly determined on the basis of average annual net earnings as shown in the claimants' Federal income tax returns for the 2 years immediately preceding the year in which the lands were acquired.

Net income shown on Federal income tax returns, resulting from use of an accelerated method of depreciation for such purposes, cannot be established in a higher amount for purposes of a benefits claim under § 202(c) of the Act by separate book or straight line life depreciation accounting records of the claimant.

Net income shown on Federal income tax returns will not be changed for purposes of a benefits claim for displacement from a business where the evidence presented, with respect to personal expense deductions disallowed for 1973 by IRS audit, and assumed by the claimants to be disallowable for 1972, is lacking in probity and generally insufficient to establish any upwards revision of the net income shown on the tax returns as filed for those years.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Gerald L. Abercrombie, 3 OHA 104 (Aug. 9, 1979)

Taking of Farm Operation

Appellants are not eligible to receive fixed payment in lieu of moving and related expenses where the alleged tree farm operation did not customarily produce such products or commodities, *i.e.*, timber or wood products, in sufficient quantity to be capable of contributing materially to the appellants' support.

Uniform Relocation Assistance Appeal of Harold W. and Willodene Olson, 1 OHA 273 (Jan. 15, 1976)

A claim for a fixed payment under sec. 202(c) of the Act, in lieu of moving and related expenses under sec. 202(a) of the Act, is properly disallowed where the record shows the acquired property was not part of a farm operation of the claimant at the time of its acquisition within the meaning of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mrs. Alpha O. Brewer, 2 OHA 1 (Mar. 30, 1976)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Payments in Lieu of Moving and Related Expenses --Continued

Fixed Payment(s)--Continued

Taking of Farm Operation--Continued

Although it was not legally incumbent upon the Park Service to use a consecutive 2-year period in calculating average annual net earnings under subsection 202(c) of the Act, claimants bear the burden of proving that it would have been more equitable in establishing such earnings to use some other period.

Uniform Relocation Assistance Appeal of Charlie F. and Jimmy W. Sanders, 3 OHA 73 (May 24, 1979)

Payments in Lieu of Moving and Related Expenses

A claim by a church for a fixed payment in lieu of actual reasonable moving and related expenses is properly allowed on the same basis as provided in sec. 202(c) of the Act and implementing regulations for displacement from other nonprofit organizations and businesses.

Uniform Relocation Assistance Appeal of South Cold Springs Friends Band Church, 1 OHA 110 (Apr. 14, 1975)

Replacement Housing Payment for Homeowners

Generally

A claim by a church for a relocation housing supplement payment is properly denied where the land acquisition did not involve displacement from residential housing as provided in sec. 203 of the Act.

Uniform Relocation Assistance Appeal of South Cold Springs Friends Band Church, 1 OHA 110 (Apr. 14, 1975)

When it appears that the replacement housing cost differential payment authorized by the Bureau under subsec. 203(a)(1)(A) of the Act represents an amount which, when added to the acquisition cost of the dwelling acquired, meets the reasonable cost of a comparable replacement dwelling which is decent, safe and sanitary, and adequate to accommodate the displaced person, the Bureau determination will be affirmed.

Uniform Relocation Assistance Appeal of Clyde L. and Eva G. Stark, 1 OHA 115 (June 3, 1975)

Where it is indicated that the Duluth Land Acquisition Officer of the National Park Service agreed to use of the schedule method for determining replacement housing supplement benefits under sec. 203(a)(1)(A) of the Act, in purchase negotiations and upon acceptance of the offer to sell and acquisition of the property for the Park Service, prior to transfer of functions of that office to the Chesterton, Indiana, office of the Park Service, subsequent action of the Chesterton Land Acquisition Officer to review the previous decision and to recompute the allowable replacement housing supplement payment under the comparative method will not prevail, even though the claim for benefits was filed in the Chesterton Office after the transfer of functions was accomplished; and the claim will be allowed on the basis first agreed upon, all else being regular.

Where the reasonable acquisition cost for a comparable replacement dwelling, computed under the schedule method, exceeds the acquisition cost of the acquired dwelling in an amount over $15,000, allowable benefits will be limited to the maximum housing cost differential of $15,000 provided in sec. 203(a)(1) of the Act.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Alden W. Wilkin, Sr., 1 OHA 137 (July 15, 1975)

Replacement housing benefits are properly denied where the dwelling on the acquired property was not occupied by the owner for the minimum period of 180 days immediately prior to the initiation of negotiations for acquisition of the property.

Uniform Relocation Assistance Appeal of John E. Houston, 1 OHA 157 (Aug. 8, 1975)

Appellants' cost differential entitlement is properly increased to include cost of repairs necessary to make replacement dwelling decent, safe and sanitary so long as the total cost differential payment does not exceed the stautory limitation of $15,000.

Uniform Relocation Assistance Appeal of William and Mary Danneman, 1 OHA 170 (Sept. 18, 1975)

A claim for a dwelling differential payment was properly allowed under Interim Regulation 3.G. where the acquired dwelling is a mobile home if the mobile home was the permanent abode of the displaced person, was real property under State law, or could not be moved without substantial damage or without unreasonable cost and was actually owned and occupied by the displaced person not less than 180 days prior to the initiation of negotiations.

Uniform Relocation Assistance Appeal of Edward and Josephine Kobbs, 1 OHA 229 (Nov. 13, 1975)

Where the record shows replacement housing supplement benefits allowed by the National Park Service under § 203(a) of the Act represent an amount which, when added to the acquisition cost of the dwelling acquired, equals the reasonable cost of a comparable replacement dwelling which is decent, safe and sanitary, and adequate to accommodate the displaced persons, but does not include reimbursement of reasonable expenses incurred by the displaced persons for closing costs incident to the purchase of the replacement dwelling, the determination of the National Park Service will be affirmed with modification to include payment of the allowable closing costs.

Uniform Relocation Assistance Appeal of Earl A. and Carol J. Karow, 1 OHA 259 (Jan. 7, 1976)

Where the comparative method is used for determining replacement housing supplemental benefits under sec. 203(a)(1)(A) of the Act the determination made by the Government appraiser will not be allowed to stand where the appellants show by competent evidence that the Government appraiser has relied on selected dwellings which were not equivalent or substantially the same as the acquired dwelling.

The appellants' claim for additional replacement housing supplemental payment will be sustained within the statutory limits where the appellants prove by a preponderance of the credible evidence the additional

cost of purchasing an adequate replacement dwelling in excess of the cost estimated by the Government.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Daniel W. Walters, 1 OHA 265 (Jan. 12, 1976)

A determination of replacement housing supplement benefits under sec. 203(a) of the Act, which is based upon housing survey data which is shown to be inadequate because the Government appraiser relied upon selected dwellings which were not equivalent or substantially the same as the acquired dwelling and he was unwilling to consider newly constructed dwellings despite the admitted scarcity of available, comparable replacement dwellings, will be modified to increase the allowable benefits in accordance with housing study data first reported in the case by another Government appraiser and which was of record and relied upon by the displaced homeowners in contracting for construction of the replacement dwelling.

The acquisition cost of an acquired dwelling is determined at the time of purchase of the property by the United States, and it is not subject to reevaluation on the basis of a subsequent housing study made for the purpose of determining the reasonable acquisition cost of a comparable replacement dwelling at a later date.

Uniform Relocation Assistance Appeal of Ethel (Bill) and Lelah Cooley, 1 OHA 280 (Feb. 11, 1976)

Where it is shown by a preponderance of the competent evidence presented that the appellant has been paid the difference between the cost of a comparable replacement trailer site and the cost of the acquired trailer site the appellant's claim over and above the amount he has been paid is properly denied.

Uniform Relocation Assistance Appeal of Lutcher D. Hines, 2 OHA 12 (June 3, 1976)

A claim for relocation supplemental housing benefits against the National Park Service is properly denied where appellants sold their property to the Government reserving a right of use for a period of years and before appellants moved from the property Congress eliminated replacement housing supplemental benefits as to this class of claimants.

Uniform Relocation and Assistance Appeal of Eugene J. and Barbara E. Hawkes, 2 OHA 28 (July 7, 1976)

A claim for replacement supplemental housing benefit is properly denied where claimants were able to purchase replacement property which was decent, safe, and sanitary at a price less than they were paid for the acquired property.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Frank Matney, 2 OHA 92 (Oct. 4, 1976)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

In determining what is a comparable replacement dwelling market value is but one element to be considered and is not necessarily controlling as to whether or not a replacement dwelling is comparable.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Harold T. Hall, 2 OHA 102 (Nov. 22, 1976)

A claim for $184.64 for repair of floor of replacement dwelling and for closet doors to be used in replacement dwelling where necessary to make replacement dwelling decent, safe and sanitary as defined by the Act will be sustained.

Uniform Relocation Assistance Appeal of Mr. Ole Hanson, 2 OHA 106 (Nov. 29, 1976)

A claim for replacement supplemental housing benefits is properly denied where a comparable housing survey of the area within a 50-mile radius of the acquired property shows that the claimant could have purchased comparable replacement property which was decent, safe and sanitary at a price less than was paid for the acquired property.

The amount paid by the Government for the acquired property and relocation assistance benefits are separate and distinct entitlements and a promise made by a Government employee to pay relocation assistance benefits as a part of the purchase price of the acquired property would be invalid and an allegation by the appellant that such a promise had been made would not constitute grounds for administrative relief from the Secretary.

Uniform Relocation Assistance Appeal of Illys M. Busacker, 2 OHA 109 (Apr. 21, 1977)

Even though a dwelling and homesite may be located on a larger tract of acquired lands whose value is based upon uses higher and better than residential, namely, commerical uses, sec. 203(a) of the Act requires that any replacement housing payment for the homeowner shall be based on the acquisition cost of the dwelling; hence, a portion of the purchase price paid for the entire property must be attributed to the dwelling and homesite. The appraised valuation of the dwelling and homesite must reflect the fair market value of such property for residential purposes; and where the purchase price of the entire property exceeds the Government's appraised value, a proportionate share of the increase should be applied to the acquisition cost of the dwelling and homesite.

In computing allowable replacement housing benefits for a homeowner displaced by Government acquisition from a tract which is larger than the average residential lot in the area and which has been appraised and purchased as valuable for commercial uses, a determination of lot size for the homesite which is consistent with standard lots for residential purposes in the vicinity of the acquired lands will be affirmed.

Uniform Relocation Assistance Appeal of Mrs. Virginia J. Rhule, 2 OHA 138 (June 29, 1977)

Where the record shows replacement housing supplement benefits were allowed upon a relocation assistance claim in error under a mistake of law, the claimants are properly required to repay to the United States the sum so paid to them erroneously.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Frederick W. Morrison, 2 OHA 147 (Aug. 9, 1977)

Where it is indicated on appeal that a determination of replacement housing supplement benefits under sec. 203 of the Act may be erroneous because it was based on selected dwellings challenged by the claimant as not equivalent or substantially the same as the acquired dwelling, the case will be remanded for further appropriate action to ascertain and allow the proper amount of replacement housing supplement benefits under the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Norton W. Stanford, 2 OHA 160 (Oct. 19, 1977)

A claim for replacement housing supplement benefits is properly disallowed where it is shown by a preponderance of the competent evidence presented that the acquired property was not the place of permanent abode of the appellants.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Maynard Hassett, 2 OHA 164 (Nov. 23, 1977)

Replacement housing benefits under sec. 203 of the Act are properly denied where the owner occupancy of the dwelling on the acquired property was for less than the minimum period of 180 days immediately prior to the initiation of negotiations for acquisition of the property.

Uniform Relocation Assistance Appeal of Mr. Barry Wayne Martin, 2 OHA 169 (Mar. 30, 1978)

In determining the total acquisition cost of an apartment dwelling connected to a restaurant and lounge on acquired property, it is proper to add to the appraisal of the acquired dwelling the proportionate costs for the land on which the dwelling is situated and for the water and sewer system for the unit, as well as the proportionate amount of the total acquisition costs for the entire property in excess of appraised valuation which is allocable to the acquisition cost of the acquired dwelling.

Additional replacement housing supplement benefits will be allowed, within the statutory limitation, where the evidence of record establishes the additional cost of purchasing a comparable replacement dwelling in excess of the cost estimated by the Government.

Replacement housing supplement benefits will be increased, within the statutory limitation, to include reimbursement of reasonable expenses incurred by the displaced person for title insurance incident to the purchase of the replacement dwelling.

Uniform Relocation Assistance Appeal of Mr. Donald P. Stephens, 2 OHA 186 (Aug. 24, 1978)

Where the record evidence shows that the mobile home on the acquired lands was a seasonal or part-time residence and not the permanent or customary and usual abode of the claimants, the claimants are ineligible to receive replacement housing payment benefits under sec. 203 of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Robert L. Burnett, Jr., 3 OHA 1 (Nov. 6, 1978)

Replacement housing supplement benefits will be increased on appeal, within the statutory limitation, to include reasonable costs claimed for keys and lock repair, and reasonable estimated costs for repair of a kitchen range, where such costs are indicated as necessary to make the replacement dwelling decent, safe and sanitary, as provided in sec. 203 of the Act and the Department's implementing regulations. Reimbursement for other items claimed but not indicated by the record evidence as necessary to make the replacement dwelling decent, safe and sanitary, as provided in sec. 203 of the Act and the Department's implementing regulations, is properly denied.

Uniform Relocation Assistance Appeal of Adam M. Strycharz, Anna M. Strycharz, Claire Strycharz and Marie Strycharz, 3 OHA 14 (Nov. 14, 1978)

Additional replacement housing cost differential benefits will be allowed, within the statutory limitation, where the record on appeal shows such additional costs as reasonably necessary for purchase of a comparable replacement dwelling.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Edward W. Kurowski, 3 OHA 19 (Dec. 12, 1978)

A claim for supplemental housing benefits may be withdrawn by the appellant pending the completion of the condemnation proceedings of the subject property.

Uniform Relocation Assistance Appeal of Roy Sagar, 3 OHA 35 (Jan. 15, 1979)

A person who was not the record owner of the dwelling on property acquired by the United States is properly held to be ineligible for homeowner's replacement housing supplement benefits under sec. 203 of the Act and the Department's regulations.

Uniform Relocation Assistance Appeal of Mrs. James L. Bragg, 3 OHA 44 (Feb. 1, 1979)

In determining the total acquisition cost of the acquired dwelling, it is proper to add thereto the proportionate amount of the total acquisition costs for the entire property in excess of appraised valuation which is allocable to the acquisition cost of the acquired dwelling.

Where the dwelling is located on a large tract of acquired land, the acquisition cost of the dwelling properly includes the cost of a homesite for the dwelling which is of a size typical for the structure for

residential purposes in the vicinity of the acquired property.

A determination of replacement housing differential benefits under the comparative method, based upon the average asking price of three selected dwellings which are shown to be comparable to the acquired dwelling and which were available at the time of the claimants' displacement, will be affirmed in the absence of competent evidence by the claimants to challenge such determination.

Where the record shows the usual charge for a residential site survey, such as required by a bank lending money on real estate, is $100, that amount may be allowed to the displaced homeowners as reasonable incidental expenses incurred in the purchase of the residential unit of the replacement property.

Where the acquiring agency shows at a hearing that an overpayment was made on a replacement housing differential claim, as a result of the agency's omission to include in the acquisition cost of the acquired dwelling and homesite the proportionate amount of a 9.24 percent increase in the total acquisition costs for the entire property allocable to the acquisition cost of the acquired residential unit, the displaced homeowners are required to repay to the United States the excess moneys received on their claim.

Uniform Relocation Assistance Appeal of Mr. and Mrs. John C. Muldowney, 3 OHA 47 (Mar. 16, 1979)

Where the record evidence shows that the home on the acquired property was a part-time residence and not the permanent or customary and usual abode of the claimants for 180 days immediately preceding the initiation of negotiations for its aquisition, the claimants are ineligible to receive replacement housing payment benefits under sec. 203 of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Harold and Beverly Zagar, 3 OHA 137 (Oct. 10, 1979)

Reimbursement of incidental expenses under § 203 of the Act, for legal fees and for surveys, is properly limited to reasonable costs for such services as required in a closing transaction involving purchase of the replacement dwelling.

Uniform Relocation Assistance Appeal of Mr. and Mrs. William C. Wasley, 3 OHA 141 (Oct. 12, 1979)

For the purpose of a determination of what constitutes a "comparable replacement dwelling," made pursuant to sec. 203(a)(1)(A) of the Act and 41 CFR 114-50.201(d) of the Department's implementing regulations, the characteristics of the land associated with the acquired dwelling should be considered.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Gilbert Schmidt, 3 OHA 145 (Nov. 2, 1979)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

Where claimants have not established that they had a right of ownership in a homesite on acquired lands, based upon a written contract of conveyance or a deed executed 180 days prior to the Government's initiation of negotiations to purchase, they are properly determined to be ineligible for homeowners' replacement housing payment benefits under § 203 of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Thomas E. Vines, 3 OHA 161 (Dec. 17, 1979)

Waiver of Benefits

A claim for replacement housing supplement benefits is properly disallowed where the claimants sold their property to the Government, reserving a right of use and occupancy of the dwelling thereon for a term of years, and before the expiration of the reserved term of use and occupancy and the claimants' move from the property the Congress eliminated replacement housing supplement benefits as to this class of claimants.

Uniform Relocation Assistance Appeal of Nicholas J. and Angeline Spirson, 2 OHA 56 (Sept. 16, 1976)

Claimants are ineligible for replacement housing supplement benefits where they sold their property to the Government reserving a right of use and occupancy of a portion thereof for residential use for a term of years and before moving from their dwelling on the portion so reserved Congress eliminated replacement housing supplement benefits as to this class of claimants.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Frederick W. Morrison, 2 OHA 147 (Aug. 9, 1977)

A person is properly held to be ineligible for replacement housing benefits where she sold real property to the Government, reserving a right of use and occupancy of the dwelling on the property for a term of years, and before the expiration of the reserved term of use and occupancy and her move from the property the Congress eliminated replacement housing benefits as to this class of claimants.

Uniform Relocation Assistance Appeal of Mrs. Blanche Schnuck, 3 OHA 65 (Apr. 10, 1979)

Replacement Housing Payment for Tenants and Certain Others

Replacement housing payments allowable under sec. 204(2) of the Act and implementing regulations to enable a displaced tenant to make a downpayment and to cover his reasonable expenses for evidence of title, recording fees, and other closing costs, on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in an area not generally less desirable in regard to public utilities and commercial and public facilities, do not include payments in the form of a building grant or a low interest mortgage, and a claim for such benefits is properly denied.

Uniform Relocation Assistance Appeal of James R. Wilmot, 1 OHA 86 (Feb. 12, 1975)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Tenants and Certain Others--Continued

Sec. 204(2) of the Act, which provides for replacement housing payments to displaced tenants to enable them to make a downpayment and to cover allowable incidental expenses as described in sec. 203(a)(1)(C) of the Act, but not in excess of $4,000, requires that such displaced persons must match any amount in excess of $2,000 by an equal amount of their own funds.

Uniform Relocation Assistance Appeal of Benjamin F. Gallagher, 1 OHA 106 (Feb. 24, 1975)

A determination of ineligibility for relocation assistance benefits will be reversed and the cases will be remanded for further adjudication of the claims for benefits where the evidence of record, including that assembled in a hearing on appeals in the matter, shows that the claimants are persons eligible for benefits as persons who were displaced from a farm operation and from rental housing on the farm property as a result of acquisition of the real property by the United States, despite the fact that their displacements occurred before the expiration of a reserved term of use and occupancy of a portion of the property.

Uniform Relocation Assistance Appeal of Marvin L. Nunes & Co. (A Partnership of Mrs. Tessie D. Nunes Brazil and Mr. Marvin L. Nunes); Appeal of Mr. Marvin L. and Mrs. Vivian H. Nunes (Tenants); and Protest of Mr. Domingos and Mrs. Navare Machado (Tenants), 2 OHA 35 (Sept. 9, 1976)

Incidental expenses as described in sec. 203(a)(1)(C) of the Act are includable in the allowable replacement housing payment under sec. 204(2) of the Act and are not additional thereto.

Uniform Relocation Assistance Appeal of Donald F. and Sharon L. Peters, 2 OHA 97 (Nov. 22, 1976)

A determination of ineligibility for a rental replacement housing payment under sec. 204 of the Act will be affirmed where the evidence shows the dwelling on the acquired land, where the claimant resided, was a single-family dwelling owned by the claimant's parents, from whom the property was acquired, and that the claimant and his parents lived there together as a family unit. In such circumstances the claimant and his parents are properly regarded as one displaced person for the purpose of replacement housing.

Uniform Relocation Assistance Appeal of Larry H. Paysinger, 2 OHA 153 (Sept. 20, 1977)

Where the record shows the monthly rent for a mobile home replacement housing site is less than the rent which was paid for the acquired site on which the mobile home had been situated, no rental replacement housing payment is allowable under sec. 204 of the Act.

Uniform Relocation Assistance Appeal of Mrs. Lona Halles, 2 OHA 156 (Oct. 17, 1977)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Tenants and Certain Others--Continued

A displaced homeowner purchases a replacement dwelling within the intent of sec. 204(2) of the Act when he salvages the dwelling formerly occupied by him on the acquired property, relocates and refurbishes it as a decent, safe, and sanitary dwelling on a replacement site acquired for the purpose, and continues to reside therein to the exclusion of a residence elsewhere.

The allowable replacement housing payment under sec. 204(2) of the Act, to a displaced homeowner who occupied the dwelling on the acquired property as owner for not less than 90 days immediately prior to the initiation of negotiations for acquisition of the property, is that amount which is necessary to enable him to make a downpayment including allowable incidental expenses described in sec. 203(a)(1)(C) of the Act, on the purchase of a decent, safe, and sanitary replacement dwelling, but not in excess of $4,000, provided, if such downpayment amount exceeds $2,000, the displaced person must match any amount in excess of $2,000 by an equal amount of his own funds.

Uniform Relocation Assistance Appeal of Mr. Barry Wayne Martin, 2 OHA 169 (Mar. 30, 1978)

Where the record shows the monthly rent for the most comparable rental replacement housing is $40 more than the reasonable, or economic, rent of the residential unit from which the claimants were displaced, a rental replacement housing differential payment of $1,920, representing the additional rental costs for a period of 4 years, is proper under sec. 204(1) of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Richard Grudosky, 2 OHA 210 (Sept. 18, 1978)

A person who entered into rental occupancy of a dwelling unit after negotiations were initiated by the United States to acquire the property is properly held to be ineligible for a replacement housing payment under sec. 204 of the Act.

Uniform Relocation Assistance Appeal of Mr. Marcel J. Dumonceaux, 3 OHA 63 (Apr. 9, 1979)

UNITED STATES

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescences of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

WAIVER

There can be no waiver of the Secretary's right to contest a mining claim believed to be invalid without a showing of an authority to make such a waiver and an intention to do so.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

Cashing of an oil and gas rental check, received more than 20 days after due, does not constitute a waiver which would permit reinstatement of a terminated lease in violation of 30 U.S.C. § 188(c) (1970), despite wording on the check that "by endorsement this check when paid is accepted in full payment."

Edward Malz, 24 IBLA 251 (Mar. 26, 1976) 83 I.D. 106

BLM does not waive its right to declare a lease expired by cashing an advance annual rental check and placing funds in an unearned account.

Richard P. Smoot, 39 IBLA 1 (Jan. 8, 1979)

The failure of BLM to readjust a coal lease issued pursuant to the terms of sec. 7, Mineral Leasing Act, 30 U.S.C. § 207 (1970), prior to or immediately after expiration of its 20-year period does not constitute a waiver of BLM's right to readjust said lease.

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (May 10, 1979)

WATER AND WATER RIGHTS

GENERALLY

One challenging the accuracy of an appraisal of water based on fair market value must show by substantial evidence the nature of the alleged error; where the appraisal has been conducted in accordance with generally accepted appraisal principles, allegations of error unsupported by evidence will be given little weight.

An attempted adjudication of Federal water rights will not be recognized where the State court 1) lacked jurisdiction over the United States for failure to serve process upon the Attorney General of the United States or his designated representative pursuant to 43 U.S.C. § 666(b) (1970); and 2) lacked jurisdiction over the subject matter for failure of the litigation to conform to the requirements of a general litigation of all water rights pursuant to 43 U.S.C. § 666(a) (1970).

A lessee of the water from a well owned by the Federal Government, who agrees that his use of the water will not be used as a basis for obtaining a permanent water right and who nevertheless proceeds to try to obtain a water right in State court based on that use, will be estopped from asserting any resulting decree of the State court for any purpose.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977) 84 I.D. 87

By acquisition of the lands now comprising the Western States, the United States acquired all rights appurtenant to such lands, including water rights.

Under the Property Clause, Congress has the power to control the disposition and use of water on, under, or appurtenant to original public domain lands, and it is not lightly inferred that this power has been exercised.

To the extent Congress has not clearly granted authority to the States over waters which are in, on, under or appurtenant to Federal lands comprising the public domain and reserved public domain, the Federal Government maintains its sovereign rights in such waters and may put them to use irrespective of State law.

Federal control over the disposition and use of water in, on, under or appurtenant to Federal land ultimately rests on the Supremacy Clause, which permits the Federal Government to exercise its constitutional prerogatives without regard to State law.

The admission of a State into the Union and the "equal footing" doctrine did not divest the United States of its plenary control over waters which are in, on, under or appurtenant to Federal lands comprising the public domain and reserved public domain.

Federal control over its needed water rights, unhampered by compliance with procedural and substantive State law, is supported by the Supremacy Clause and the doctrine that Federal activities are immune from State regulation unless there is specific congressional action providing for State control.

Originally, the common law riparian rules of natural flow applied to the public lands; these riparian rules could be changed by State legislatures only if such changes did not impair the right of the United States to the continued flow of water bordering its lands needed for the beneficial use of Government property, or if the Congress expressly consented.

Three Federal statutes provide the general basis for State regulatory authority over water rights: Act of July 26, 1866, § 9, 14 Stat. 253; Act of July 9, 1870, § 17, 16 Stat. 218, 43 U.S.C. § 661 (1976); and the Desert Land Act of 1877, 19 Stat. 377, 43 U.S.C. § 321 *et seq.* (1976).

The Act of July 26, 1866, § 9, 14 Stat. 253, and the Act of July 9, 1870, § 17, 16 Stat. 218, 43 U.S.C. § 661 (1976), sanctioned private possessory rights to water on the public lands asserted under local laws and customs; Congress in effect waived its proprietary and riparian rights to water on the public domain to the extent water is appropriated by members of the public under State law in conformance with the grant of authority found in these two Acts, and Congress thereby confined the assertion of inchoate Federal water rights to unappropriated waters that exist at any point in time.

Supreme Court *dicta* concerning the effect of the Desert Land Act of 1877, 19 Stat. 377, 43 U.S.C. § 321 *et seq.* (1976), on Federal water rights are somewhat at war with each other; but Supreme Court decisions upholding Federal reserved water rights must mean that the Desert Land Act of 1877 did not divest the United States of its authority, as sovereign, to use the unappropriated waters on the public lands for governmental purposes.

Since the Federal Government has never granted away its right to make use of unappropriated waters on Federal lands, the United States retains the power to vest in itself water rights in unappropriated waters on, in, under, or appurtenant to Federal lands, and it may exercise such power independent of substantive State law.

For purposes of the Executive Order of Apr. 17, 1926, the term "spring" means a discrete natural flow of water emerging from the earth at a reasonably distinct location, whether or not such flow constitutes a source of or is tributary to a water course, pond, or other body of surface water. The term "waterhole" means a dip or hole in the earth's surface where surface or groundwater collects and which may serve as a watering place for man or animals.

The Executive Order withdrew, as of Apr. 17, 1926, all lands containing important springs and waterholes that existed as of that date on unappropriated, unreserved public lands.

The Executive Order does not affect a valid, private right to use some or all of the waters of such a source that vested under the applicable State laws, custom or usage prior to Apr. 17, 1926.

The Executive Order does not withdraw artifically developed sources of water or manmade structures for collection of water on the public domain. However, any interest held in those artificially developed or constructed sources or structures passes to the United States upon abandonment by the developer or his successor in interest by virtue of the United States' ownership of the land.

The Executive Order withdraws, by operation of law, lands which become of the character contemplated in the Order subsequent to the date of the Order; *i.e.*, vacant, unappropriated, unreserved public lands upon which springs or waterholes come into existence after Apr. 17, 1926.

The Executive Order withdraws, by operation of law, any vacant, unappropriated, unreserved public land upon which is located a spring or waterhole and for which a private vested right to use all of such water under applicable State law, custom and usage has previously existed upon abandonment or forfeiture of that State water right under the terms of the applicable State law, custom or usage.

The Executive Order withdraws all lands containing springs or waterholes as defined and subject to the limitations set forth above, regardless of whether the water source has been the subject of an official finding as to its existence and location.

The priority date for the public right to use the waters of a spring or waterhole withdrawn under the Order is Apr. 17, 1926, for all public springs and waterholes existing on that date. Those public springs and waterholes that naturally come into existence at a later date are withdrawn when they come into existence.

Any action taken by private party who did not have a vested State water right prior to Apr. 17, 1926, or had not received appropriate permission from the United States subsequent to that date to make use of the public waterhole or spring withdrawn by the Order is a nullity and of no force and effect. Any entry onto the reserved land for such purpose constitutes a trespass.

The purposes for which water is reserved under the 1926 Order are (a) stockwatering, (b) human consumption, (c) agriculture and irrigation, including sustaining fish, wildlife and plants as a food and forage source, and (d) flood, soil, fire and erosion control.

Because the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 *et seq.* (1976), repealed both authorizing statutes under which the Apr. 17, 1926, Order was issued, springs and waterholes on the public domain coming into existence after Oct. 21, 1976, are not withdrawn by the Apr. 17, 1926, Order but must be withdrawn under other, still existing legislative authority to be effective.

Sec. 701(g) of FLPMA, 43 U.S.C. § 1701 notes (1976), maintains the status quo in the relationship between the States and the Federal Government on water, and allows for (a) the continued appropriation of unappropriated nonnavigable waters on the public domain by private persons pursuant to State law as authorized by the Desert Land Act; (b) the right of the United

WATER AND WATER RIGHTS--Continued

GENERALLY--Continued

States to use unappropriated water for the congressionally recognized and mandated purposes set forth in legislation providing for the management of the public domain; and (c) application by the United States to secure water rights pursuant to State law for these purposes.

The National Park Service and Fish and Wildlife Service may appropriate water to fulfill any congressionally authorized function for areas under their administration.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

Water is not a locatable mineral and sales thereof cannot be considered in determining whether there has been a valuable discovery.

United States v. Ted G. Ax, 43 IBLA 146 (Sept. 28, 1979)

FEDERAL APPROPRIATION

The United States has the right to appropriate water on its own property for congressionally authorized uses, which right arises from actual use of unappropriated water by the United States to carry out congressionally authorized management objectives on Federal lands, but may not predate in priority the date action is taken leading to an actual use, and it may not adversely affect other rights previously established under State law.

The appropriation of water by the Federal Government for authorized Federal purposes cannot be strictly limited by State substantive law; for example, by what State law says is a "diversion" of water or a "beneficial use" for which water can be appropriated.

The management programs mandated by Congress in such Acts as the Taylor Grazing Act and FLPMA require the appropriation of water by the United States in order to assure the success of the programs and carry out the objectives established by Congress.

FLPMA, the Taylor Grazing Act, the O&C Act, and other statutes permit the United States to appropriate water for the diverse purposes found in the various statutes.

FLPMA authorizes the BLM to appropriate water for such uses as fish and wildlife maintenance and protection, scenic value preservation, and human consumption, and protection of areas of critical environmental concern.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

FEDERALLY RESERVED WATER RIGHTS

Where a waterhole and the surrounding land were withdrawn pursuant to both an Executive Order and an Act of Congress and reserved exclusively for use by the public before the water had been appropriated by others, the Federally reserved water right is superior to and precludes any acquisition of rights to the water by others.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977)
84 I.D. 87

WATER AND WATER RIGHTS--Continued

FEDERALLY RESERVED WATER RIGHTS--Continued

When the Federal Government withdraws land from the public domain and reserves it for a Federal purpose, by implication, it reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation, and the reserved water right vests on the date of the reservation and is superior to the rights of future appropriators.

The intent to reserve water is inferred if previously unappropriated water is necessary to accomplish the purposes for which the land reservation is created, but where water is only valuable for a secondary use of the reservation there arises a contrary inference that the United States would acquire water in the same manner as other public or private appropriators.

The priority date of the Federal reserved water right for purposes of determining seniority of water rights relative to those obtained under State or other Federal law is the date of the Federal reservation or withdrawal action initiated towards a reservation.

The volume and scope of particular reserved water rights are Federal questions calling for the application of Federal law; State law requirements such as notice of application to beneficial use and restrictions on beneficial use are not applicable to reserved water rights.

Reserved water rights encompass both existing and reasonably foreseeable future water uses necessary to fulfill the purposes of the reservation.

While persuasive arguments can be made for and against the application of reserved water rights on acquired lands, it is the policy of this Department to obtain water rights for acquired lands through means other than the assertion of a reserved water right.

The Act of June 16, 1934, 30 U.S.C. § 229a (1976), creates a reserved right when an oil and gas prospecting permittee or lessee strikes water "of such quality and quantity as to be valuable and usable at a reasonable cost for agriculture, domestic, or other purposes" as found by the Secretary.

The withdrawals of lands for powersites under 43 U.S.C. § 141 (1970) do not carry with them reserved water rights for purposes under the administration of the Department of the Interior, simply because of their reservation as a powersite.

Water sources located within stock driveways and reserved pursuant to sec. 10 of the Act of Dec. 29, 1916, 43 U.S.C. § 300 (1970), are reserved to the extent necessary to provide for stockwatering during the process of moving livestock through these reserved access corridors.

Oil shale withdrawals administered by the Department of the Interior have reserved water rights for the purposes of investigation, examination and classification of those lands. Water is not reserved for actual oil shale development.

The Taylor Grazing Act created no reserved water rights.

There are no reserved water rights on the revested Oregon and California Railroad lands and the Coos Bay Wagon Road lands, the "O&C" lands.

Classification of lands under the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 et seq. (1970), does not create reserved water rights.

Designation of lands as sanctuaries for wild, free-roaming horses and burros under the Act of Dec. 15, 1971, 16 U.S.C. § 1333 *et seq.* (1976), does not reserve water for the purposes of wild horse and burro drinking.

Rivers administered by BLM that have been designated as components of the Wild and Scenic Rivers System under 16 U.S.C. §§ 1271-1287 (1976) carry with them reserved water rights sufficient to fulfill the purposes of the Act.

The Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.* (1976), does not establish any reserved rights in BLM lands.

Sec. 8 of the 1902 Reclamation Act, 43 U.S.C. § 372 *et seq.* (1976), prohibits the Bureau of Reclamation from claiming any reserved water rights for any reclamation project unless the terms of any project authorization subsequent to 1902 can fairly be read to provide for a reservation of water.

The particular reserved water rights for national park and national monument areas include water required for scenic, natural, and historic conservation uses; wildlife conservation uses; sustained public enjoyment uses; and National Park Service personnel uses; all of which are intimately related to the fundamental purpose for park and monument reservation, as articulated in 16 U.S.C. § 1 (1976).

Among other reserved water rights for national parks and national monuments, 16 U.S.C. § 1 (1976) encompasses reserved water rights for concession uses to provide sustained public enjoyment and reserved water rights for water-borne public enjoyment and recreation.

Congress has taken no action subsequent to the National Park Service Organic Act of Aug. 25, 1916, 39 Stat. 535, 16 U.S.C. § 1 (1976), to negate the implied intent contained in the Organic Act that all unappropriated waters necessary to fulfill the purposes of park areas are reserved as of the date of the enabling legislation.

The discretionary authority contained in the Act of Aug. 7, 1946, 60 Stat. 885, 16 U.S.C. § 17j-2(g) (1976), authorizing the National Park Service to acquire water rights in accordance with local laws, is not inconsistent with the assertion of the reserved water rights principle and is readily distinguishable from Acts requiring deference to State water law.

As a general rule, the above-developed reserved water rights apply to components of the National Park System other than national parks and national monuments, though the extent of particular reserved water rights must be determined on a case-by-case basis, involving an interpretation of 16 U.S.C. § 1 (1976) and the establishing legislation.

Executive branch reservations for native bird preserves, migratory bird refuges, game ranges, fish hatcheries, elk refuges and similar refuges and preserves reserved sufficient water needed for the maintenance of the species (*e.g.*, ecosystem food supply, breeding habitat, fire protection, domestic needs of Fish and Wildlife Service personnel) mentioned in the executive orders establishing the individual reservations.

Executive branch refuge reservations superimposed on areas previously withdrawn for powersites, reclamation or other purposes obtain reserved water rights necessary to fulfill the specific purposes for the refuge reservations.

Wildlife Refuge uses authorized by the Refuge Receipts Act of 1935, 49 Stat. 383, 16 U.S.C. § 715s(f) (1976); the Refuge Recreation Act of 1962, 76 Stat. 653, 16 U.S.C. §§ 460k-460k-4 (1976); and the National Wildlife Refuge Administration Act of 1966, 80 Stat. 927, 16 U.S.C. §§ 668dd-668ee (1976), such as public recreational uses, do not obtain reserved water rights under existing precedent.

The Wild and Scenic Rivers Act, 82 Stat. 917, 16 U.S.C. § 1284(c) (1976), contains an express, though negatively phrased, assertion of Federal reserved water rights.

The extent of the water reserved for wild and scenic rivers is the amount of unappropriated water necessary to protect the particular aesthetic, recreational, scientific, biotic or historical features which led to the river's inclusion as a component of the National Wild and Scenic Rivers System, and to provide public enjoyment of such values.

Designation of wild and scenic rivers does not automatically reserve the entire unappropriated flow of the river and an examination of the individual features which led to each component river's designation must be conducted to determine the extent of the reserved water right.

Areas which are congressionally designated as wilderness under the Wilderness Act of Sept. 3, 1964, 78 Stat. 890, 16 U.S.C. § 1131 *et seq.* (1976), obtain reserved water rights for the maintenance of minimum stream flows and lake levels (*e.g.*, for science appreciation and primitive water-borne recreation) and for ecological maintenance (*e.g.*, evapotranspiration for natural communities, wildlife watering, firefighting).

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
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STATE LAWS

An attempted adjudication of Federal water rights will not be recognized where the State court 1) lacked jurisdiction over the United States for failure to serve process upon the Attorney General of the United States or his designated representative pursuant to 43 U.S.C. § 666(b) (1970); and 2) lacked jurisdiction over the subject matter for failure of the litigation to conform to the requirements of a general litigation of all water rights pursuant to 43 U.S.C. § 666(a) (1970).

Where a waterhole and the surrounding land were withdrawn pursuant to both an Executive Order and an Act of Congress and reserved exclusively for use by the public before the water had been appropriated by others, the Federally reserved water right is superior to and precludes any acquisition of rights to the water by others.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977)
84 I.D. 87

When considering an application for determination of right-of-way privileges, the Department of the Interior has no power to determine questions of control and appropriation of water rights between private parties which is a matter of State law. An application for a water pipeline right-of-way will not be approved where the applicant has no existing right to the water which he proposes to convey.

Broken H. Ranch Co., 33 IBLA 386 (Jan. 26, 1978)

WATER AND WATER RIGHTS--Continued

STATE LAWS--Continued

Since Congress has not generally directed the Federal Government to comply with State water law, such compliance is required only in those specific instances where Congress has so provided, but in the converse, Congress has not prohibited the United States from voluntarily complying with such State water laws.

State law should be followed to the greatest practicable extent in acquiring Federal water rights. This includes following State procedural law in all cases involving appropriation of non-reserved water rights and State substantive law where that law recognizes the Federal appropriative right in all pertinent respects.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979) 86 I.D. 553

WATER POLLUTION CONTROL

FEDERAL WATER POLLUTION CONTROL ACT

Generally

The requirement for a permit under sec. 404 of the Federal Water Pollution Control Act applies to the Bureau of Reclamation to the same extent as any other person, and with certain exceptions the Bureau must obtain a permit from the Corps of Engineers prior to any discharge of dredged or fill material into the navigable waters.

Activities "affirmatively authorized by Congress," which are excepted from sec. 10 of the Rivers and Harbors Act of 1899, are not excepted from sec. 404 of the Federal Water Pollution Control Act. Notwithstanding the exception of a discharge of dredged or fill material under sec. 10 of the Rivers and Harbors Act, compliance with sec. 404 is required.

A permit under sec. 404 of the Federal Water Pollution Control Act is required for the discharge of dredged or fill material whenever: (a) the "discharge" constitutes any addition of any pollutant to navigable waters from any discernible, confined and discrete conveyance, including the placement of fill and the building of any structure or impoundment; and (b) the "dredged material" is dredged spoil that is excavated or dredged from the waters of the United States; or (c) the "fill material" includes any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body, including any structure which requires rock, sand, dirt or other material for its construction; and (d) the discharge is made into "waters of the United States," which extend beyond those waters meeting the traditional tests of navigability to those encompassed by the broadest possible constitutional interpretation.

To secure the exemption under sec. 404(r) of the Federal Water Pollution Control Act for projects described in an environmental statement, compliance with seven specific conditions is required. The exemption does not apply to the maintenance of existing Federal projects, but only to new construction. While the exemption provides an alternative procedure to achieve compliance with sec. 404 of the Act for a limited category of Federal projects under very specific conditions, it does not lessen the substantive requirements that apply to the discharge of dredged or fill material.

To secure the exemption under sec. 404(f)(1) of the Federal Water Pollution Control Act for the maintenance of currently serviceable structures, compliance with four specific conditions is required. The exemption does not apply to the discharge of dredged material incident to maintenance dredging, or to new construction.

Permit Requirements for Discharge of Dredged or Fill Material Under Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. § 1344, M-36915 (Aug. 27, 1979) 86 I.D. 400

WILD AND SCENIC RIVERS ACT

Oil and gas lease offers embracing lands within an area under consideration as a potential wild and scenic river area under sec. 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1276(d) (1970), or within adjacent areas having special resource values which might be damaged by oil and gas leasing may be properly rejected in the exercise of the Secretary's discretion in leasing.

John Oakason, Heard Oil Co., 19 IBLA 191 (Mar. 18, 1975)

Rosita Trujillo, 21 IBLA 289 (Aug. 11, 1975)

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2785 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. This withdrawal does not extend to minerals in lands near tributaries of designated rivers unless the tributaries were expressly included.

Where a statute designates the Illinois River as a potential addition to the river system, and similarly designates other rivers and their tributaries, the tributaries of the Illinois River are not included as potential additions, under the principle *inclusio unius alterius exclusio est*.

Walter D. Freeman et al., 25 IBLA 150 (June 10, 1976)

It is not necessary to reject an application filed pursuant to the Act of Feb. 15, 1901, for a right-of-way in an area adjacent to but outside of the boundaries of an area designated as a potential addition to the Wild and Scenic Rivers System, unless it is determined that the project would invade the area or diminish the scenic, recreational, and fish and wildlife values present within the potential wild, scenic, or recreational river area, or there are other justifiable grounds for rejection.

Van Rietmann, 25 IBLA 171 (June 14, 1976)

WILD AND SCENIC RIVERS ACT--Continued

Public land within one-quarter mile of the banks of a river designated by Act of Congress for potential addition to the national wild and scenic rivers system is withdrawn by statute from entry, sale, or other disposition under the public land laws of the United States for a designated period to allow a study of the suitability of the river for inclusion in the system and a report to Congress thereon. This withdrawal, however, does not preclude a right-of-way grant which does not involve a conveyance of title or rights leading thereto.

The Secretary has the discretionary authority to grant a right-of-way application which includes an area designated for potential addition to the national wild and scenic rivers system where it is determined to be in the public interest. In the exercise of that discretion it is appropriate to consider the suitability of the subject area for inclusion in the system, classification of the characteristics (wild, scenic, or recreational) of the river area, and whether such a land use will unreasonably interfere with the values disclosed.

Lower Valley Power & Light, Inc., 29 IBLA 107 (Feb. 23, 1977)

The decision to issue an oil and gas lease to the first-qualified offeror is within the discretion of the Secretary of the Interior, and offers within proposed wild and scenic river areas may be rejected to protect such areas.

The Bureau of Land Management may require the execution of special stipulations, including a no-surface-occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation along a proposed wild and scenic river corridor, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Questa Petroleum Co., 33 IBLA 116 (Dec. 16, 1977)

The Bureau of Land Management may require the execution of special stipulations, including a no-surface occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation in a scenic area, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Robert L. Healy, 35 IBLA 66 (May 12, 1978)

A stipulation prohibiting drilling and storage of oil on a portion of an oil and gas lease of 160 acres in order to protect an area of a river which is in a study section of the Wild and Scenic Rivers Act is reasonable, without consideration of other factors, where it leaves three-quarters of the lease open to regular activity.

Duncan Miller, 35 IBLA 108 (May 15, 1978)

WILD AND SCENIC RIVERS ACT--Continued

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. Land within one-quarter mile of the bank of the Illinois River, Oregon, a river designated in sec. 5(a) of the Act as a potential addition to the system, is withdrawn from mineral entry and therefore, not available for mining claims.

Robert Corbett, 36 IBLA 84 (July 12, 1978)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. Oil and gas lease offers within area proposed for inclusion in the wild and scenic river system may be rejected to protect such areas.

The Bureau of Land Management may require the execution of special stipulations, including a no-surface-occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation along a proposed wild and scenic river corridor, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Dean W. Rowell, 37 IBLA 387 (Nov. 6, 1978)

Designation of a river for potential addition to the national wild and scenic rivers system, pursuant to the Wild and Scenic Rivers Act of 1968, *as amended*, 16 U.S.C. § 1271 *et seq.* (1976), withdraws Federal lands constituting the bed or bank or within one-quarter mile of the bank of such river from all forms of appropriation under the mining laws, and on appeal the mining claimant bears the burden of showing by survey or other evidence that his claim is outside the withdrawn area.

Barry C. Binning, 39 IBLA 390 (Feb. 28, 1979)

Rivers administered by BLM that have been designated as components of the Wild and Scenic Rivers System under 16 U.S.C. §§ 1271-1287 (1976) carry with them reserved water rights sufficient to fulfill the purposes of the Act.

The Wild and Scenic Rivers Act, 82 Stat. 917, 16 U.S.C. § 1284(c) (1976), contains an express, though negatively phrased, assertion of Federal reserved water rights.

The extent of the water reserved for wild and scenic rivers is the amount of unappropriated water necessary to protect the particular aesthetic, recreational, scientific, biotic or historical features which led to the river's inclusion as a component of the National Wild and Scenic Rivers System, and to provide public enjoyment of such values.

Designation of wild and scenic rivers does not automatically reserve the entire unappropriated flow of the river and an examination of the individual features which led to each component river's designation must be conducted to determine the extent of the reserved water right.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979) 86 I.D. 553

WILD FREE-ROAMING HORSES AND BURROS ACT

A district manager's decision denying a grazing permit for 10 domestic horses, based on the fact that such a denial was required for proper range management and for protection of wild horses under the Wild Free-Roaming Horses and Burros Act, 85 Stat. 649-651, will be overruled where evidence presented at a hearing shows that granting the permit will not interfere with BLM's management of the wild horses under the Act.

Chester Baker, 26 IBLA 257 (Aug. 18, 1976)

Where claimants have filed claims to horses on the public lands under sec. 5 of the Wild Horses and Burros Act, 16 U.S.C. § 1335 (Supp. IV 1976), and pursuant to the regulations in 43 CFR Subpart 4713, and failed to recover them within a reasonable period of time as provided in gathering authorizations issued by the Bureau of Land Management, the Department has no authority to nullify their claims of ownership; the regulations allow more than one authorization to be obtained; claimants in proper circumstances may obtain further authorizations; and upon compliance with legal requirements may gather and claim their horses and burros.

George B. Shaffner et al., 26 IBLA 310 (Aug. 30, 1976)

One who has laid claim, pursuant to the Wild Free-Roaming Horses and Burros Act, to horses on the public lands and who does not remove them within a reasonable period, is subject to having the renewal of his grazing lease denied.

Truman and Velma Cross, 29 IBLA 4 (Feb. 7, 1977)

A district office decision denying an amended claim for ownership of horses under sec. 5 of the Wild Free-Roaming Horses and Burros Act of Dec. 15, 1971, 16 U.S.C. § 1335 (1976), will be reversed where appellant shows that due to the vastness and nature of the terrain involved the original claim was only an estimate of the number of horses within the allotment, that the additional horses claimed are progeny of the original horses gathered as authorized by BLM, that the allotment on which these horses are located is fenced, that appellant applied to amend its claim, and that appellant has never conceded ownership of these horses.

Salmon River Cattlemen's Ass'n, Inc., 39 IBLA 381 (Feb. 28, 1979)

Designation of lands as sanctuaries for wild, free-roaming horses and burros under the Act of Dec. 15, 1971, 16 U.S.C. § 1333 *et seq.* (1976), does not reserve water for the purposes of wild horse and burro drinking.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

WILDERNESS ACT

National forest public lands which have not been withdrawn from oil and gas leasing but are under study by the Forest Service as a proposed wilderness area are available for leasing in the discretion of, and under conditions imposed by, the Secretary of the Interior. Such discretion is not properly exercised when the Bureau of Land Management rejects an offer solely upon the recommendation of the Forest Service that land is a "candidate" for a proposed wilderness area without making an independent determination that leasing, with

WILDERNESS ACT--Continued

appropriate protective stipulations, is or is not in the public interest.

Eudora E. Hartley, 23 IBLA 102 (Dec. 23, 1975)

Public lands in national forests are presently open to oil and gas leasing regardless of whether they are part of an officially designated wilderness area. However, where the land is within such an established wilderness area, the Secretary of Agriculture has the statutory authority to prescribe reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for the purpose of the lease, although only the Secretary of the Interior may close the land to leasing or prohibit the issuance of a lease.

Stanley M. Edwards, 24 IBLA 12 (Feb. 6, 1976)
83 I.D. 33

Areas which are congressionally designated as wilderness under the Wilderness Act of Sept. 3, 1964, 78 Stat. 890, 16 U.S.C. § 1131 *et seq.* (1976), obtain reserved water rights for the maintenance of minimum stream flows and lake levels (*e.g.*, for science appreciation and primitive water-borne recreation) and for ecological maintenance (*e.g.*, evapotranspiration for natural communities, wildlife watering, firefighting).

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
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WILDLIFE REFUGES AND PROJECTS

GENERALLY

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, *as amended*.

"Waterfowl production areas" are within the meaning of "wildlife refuge lands" in 43 CFR 3101.3-3(a) and, therefore, are subject to the prohibition against oil and gas leasing (except where drainage is involved) contained in 43 CFR 3101.3-3(a)(1).

T. R. Young, Jr., 20 IBLA 333 (June 11, 1975)

The prohibition in 43 CFR 3101.3-3(a)(1) against leasing for oil and gas in wildlife refuge lands, except where there is drainage, applies to areas withdrawn for waterfowl production, even though the withdrawal order did not prohibit leasing. Offers for such lands and lakebeds riparian thereto are properly rejected.

A. G. Golden, 21 IBLA 76 (June 25, 1975)

An application for lease of geothermal resources within a wildlife refuge is properly rejected because leasing of such areas is specifically prohibited by the Geothermal Resources Act and 43 CFR 3201.1-6.

Antoinette Carter, 37 IBLA 222 (Oct. 12, 1978)

WILDLIFE REFUGES AND PROJECTS--Continued

GENERALLY--Continued

The National Park Service and Fish and Wildlife Service may appropriate water to fulfill any congressionally authorized function for areas under their administration.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

Land within the National Desert Wildlife Range is not subject to noncompetitive oil and gas leasing.

Kenneth F. Cummings, 43 IBLA 110 (Sept. 28, 1979)

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-1 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 226 (1976).

Tucker and Snyder Exploration, Inc., 43 IBLA 235 (Oct. 10, 1979)

LEASES AND PERMITS

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

Paula J. Jones, 24 IBLA 76 (Feb. 24, 1976)

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Ross et al., 27 IBLA 4 (Sept. 17, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to areas withdrawn for wildlife conservation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes, 27 IBLA 46 (Sept. 23, 1976)

WILDLIFE REFUGES AND PROJECTS--Continued

RIPARIAN RIGHTS

Executive branch reservations for native bird preserves, migratory bird refuges, game ranges, fish hatcheries, elk refuges and similar refuges and preserves reserved sufficient water needed for the maintenance of the species (*e.g.*, ecosystem food supply, breeding habitat, fire protection, domestic needs of Fish and Wildlife Service personnel) mentioned in the executive orders establishing the individual reservations.

Executive branch refuge reservations superimposed on areas previously withdrawn for powersites, reclamation or other purposes obtain reserved water rights necessary to fulfill the specific purposes for the refuge reservations.

Wildlife Refuge uses authorized by the Refuge Receipts Act of 1935, 49 Stat. 383, 16 U.S.C. § 715s(f) (1976); the Refuge Recreation Act of 1962, 76 Stat. 653, 16 U.S.C. §§ 460k-460k-4 (1976); and the National Wildlife Refuge Administration Act of 1966, 80 Stat. 927, 16 U.S.C. §§ 668dd-668ee (1976), such as public recreational uses, do not obtain reserved water rights under existing precedent.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
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WITHDRAWALS AND RESERVATIONS

GENERALLY

Settlement on a homestead claim in Alaska 2 days prior to a withdrawal of the land does not except the land from the withdrawal where the claimant failed to file his notice of location within 90 days after settlement as required by the Act of Apr. 29, 1950, 64 Stat. 94, 43 U.S.C. §§ 270, 270-5, 270-6 (1970), and his notice is properly held to be unacceptable for recordation.

Gary Lee Slay, 18 IBLA 345 (Jan. 14, 1975)

A selection application by the State of Alaska must be rejected where all of the applied for land is withdrawn from State selection.

State of Alaska, 18 IBLA 351 (Jan. 15, 1975)

Lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (Supp. III 1973), are withdrawn from all forms of appropriation under the public land laws, including, without limitation, the Recreation and Public Purposes Act, *as amended*, 43 U.S.C. §§ 869 to 869-3 (1970), and an application under the latter Act for such withdrawn lands is properly rejected.

Alaska Department of Fish and Game, 20 IBLA 50 (Apr. 23, 1975)

A claimant's occupancy of a headquarters site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

Rene P. Lamoureux, 20 IBLA 243 (May 16, 1975)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Withdrawn lands and lands closed to nonmineral entry are not open to appropriation under the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970). No rights may be initiated under the Alaska Native Allotment Act by occupation and use of lands not open to appropriation.

Anna Opheim, Chris Roy Opheim, Philip Katelnikoff, 20 IBLA 290 (May 27, 1975)

Oil and gas lease offers embracing lands withdrawn or reserved for any agency of the Department of Defense may not be granted without the consent of that Department. 43 U.S.C. § 158 (1970). Such lease offers must be rejected where such consent is withheld as inconsistent with the military use, and the offers may not be suspended to await the possible availability of the lands for leasing.

Mobil Oil Corp., 20 IBLA 296 (May 27, 1975)

The Secretary's authority to withdraw public lands is separate from, and in addition to, the Secretary's discretionary authority under sec. 17 of the Mineral Leasing Act of 1920, *as amended*. Therefore, public lands which are described in a public land order as not withdrawn from leasing under the mineral leasing laws remain subject to an exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, *as amended*.

T. B. Young, Jr., 20 IBLA 333 (June 11, 1975)

A claimant's occupancy of a homesite prior to a withdrawal does not establish a "valid existing right," excepted by the withdrawal, under the Act of Apr. 29, 1950, where claimant did not file his notice of location within 90 days after occupancy, nor did he file a notice of location or purchase application prior to the withdrawal.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

The date of the segregation from settlement, caused by the filing of a State selection application in the appropriate office of the Bureau of Land Management, is not tantamount to the "effective date" of "[a] withdrawal or reservation" described in the Secretarial directive of Oct. 18, 1973. Therefore, Native use and occupancy commenced before such segregation may continue, unhampered by such segregation, to gain the requisite 5 years' use and occupancy required under 43 U.S.C. §§ 270-1 to 270-3 (1970).

Victor A. Amahonak, 21 IBLA 387 (Aug. 18, 1975)

An applicant's opinion that a withdrawal has not served, or does not serve, any useful purpose does not vitiate the effect of the withdrawal to bar appropriation of the land. Likewise, the extended period of time that a withdrawal has been in effect does not vitiate such impact.

Serafina Angion, 22 IBLA 104 (Sept. 22, 1975)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

There can be no "valid existing right" in a claimant of a headquarters site on land withdrawn by Public Land Order No. 4582 unless a notice of location or application to purchase had been filed in accordance with the Act of Apr. 29, 1950. The filing of an application for a survey of omitted land did not by itself create any preference rights to the land.

An application to purchase a headquarters site is subject to rejection if it is filed after the 5-year period from the filing of a notice of location of the claim, or, if no notice had been filed, it was filed more than 90 days after the land has been withdrawn.

Ray W. Ferguson, 22 IBLA 160 (Sept. 30, 1975)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." Pending final action on the matter, public lands are not open to Indian allotment settlement and disposition following the filing and noting of an application by the Bureau of Land Management for a proposed withdrawal; regulation 43 CFR 2091.2-5(a) provides that the noting of an application for withdrawal on the official plats maintained in the proper land office shall temporarily segregate the subject land from settlement under the public land laws to the extent that the withdrawal applied for, if effected, would prevent such forms of disposal. Following issuance of a public land order withdrawing the subject land, Indian allotment applications previously held in a suspense status are properly rejected.

Thurman Banks et al., 22 IBLA 205 (Oct. 15, 1975)

Where the claimant of a headquarters site filed his notice of location, occupied the land, and began making improvements thereon prior to the segregation of the land by a withdrawal made subject to valid existing rights, it is error for the Bureau of Land Management to refuse to record the claimant's notice of location, or to cancel the claim without notice and an opportunity for hearing.

Donald J. Thomas, 22 IBLA 210 (Oct. 15, 1975)

Mining claims are properly declared null and void ab initio where they are located on land which, on the date of location, was included in an application for withdrawal which previously had been noted on land office records.

John Boyd Parsons, 22 IBLA 328 (Nov. 10, 1975)

Merrill M. Moore, J. J. Adams, 43 IBLA 357 (Oct. 29, 1979)

Location of a homesite claim without substantial use or occupancy of the land in compliance with the law creates no property interest in the land. Where the claimant under sec. 10 of the Act of May 14, 1898, *as amended*, 43 U.S.C. § 687(a) (1970), has merely marked the boundaries of the claim prior to a withdrawal of the land, such activity does not constitute occupation or possession of the land and the claim will be defeated by that withdrawal.

Edward P. Dooley, 22 IBLA 338 (Nov. 14, 1975)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

A Native allotment application for lands within a wildlife range withdrawal is properly rejected where the applicant did not initiate and complete substantial use and occupancy for a 5-year period prior to the effective date of withdrawal or segregation.

Medina Flynn, 23 IBLA 288 (Jan. 12, 1976)

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2785 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

The filing of a notice of location for a homesite will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator of the homesite fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right excepted from a withdrawal.

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and alleges that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the Bureau of Land Management to hold that the location notice was unacceptable for recordation, and the claim may only be canceled following notice to the claimant and an opportunity to demonstrate the establishment of a valid existing homesite claim prior to the withdrawal.

Steven P. [illegible], 24 IBLA 23 (Feb. 11, 1976)

National forest lands, some of which are in a wilderness area, a roadless area, or a memorial parkway, which have not been withdrawn from oil and gas leasing, are subject to leasing in the discretion of and under conditions imposed by the Secretary of the Interior. However, where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his plenary discretion to refuse to issue leases, and subsequent offers for lands in this designated area restricted from leasing are properly rejected.

James Donoghue et al., 24 IBLA 210 (Mar. 23, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a State under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds et al., 25 IBLA 67 (June 1, 1976)
83 I.D. 275

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and he alleges, and the field reports so indicate, that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the State Office to hold that the withdrawal terminated the claimant's rights.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Ross et al., 27 IBLA 4 (Sept. 17, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to areas withdrawn for wildlife conservation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes, 27 IBLA 46 (Sept. 23, 1976)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Sec. 5(b) of the Act of May 25, 1948 (62 Stat. 269) is not applicable to those tribal lands upon which the Flathead Irrigation Project's Kerr Substation and Switchyard are located.

Relocation of Flathead Irrigation Project's Kerr Substation and Switchyard, M-36735 (Supp.) (Sept. 24, 1976)
83 I.D. 346

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a State under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

The Secretary in the exercise of his discretionary authority, may refuse to lease public lands for oil and gas, even though the lands are not withdrawn from oil and gas leasing.

Pinnacle Mining and Exploration Co., Inc., 28 IBLA 249 (Dec. 20, 1976)

The Agreement of Dec. 4, 1893, between the Yuma (now Quechan) Indians and the United States, ratified in sec. 17 of the Act of Aug. 15, 1894, was an absolute, present cession of any and all interests of the Indians to the nonirrigable lands in the Fort Yuma Indian Reservation created by Executive Order of Jan. 9, 1884.

Assuming that the Act of Aug. 15, 1894, was a conditional rather than an absolute cession by the Yuma (now Quechan) Indians of their rights to the nonirrigable lands in the Fort Yuma Indian Reservation, all material conditions on the part of the United States were met, and the cession has occurred.

Title to Certain Land within the Boundaries of the Fort Yuma Indian Reservation as Established by the Executive Order of Jan. 9, 1884, M-36886 (Jan. 18, 1977)
84 I.D. 1

Public land within one-quarter mile of the banks of a river designated by Act of Congress for potential addition to the national wild and scenic rivers system is withdrawn by statute from entry, sale, or other disposition under the public land laws of the United States for a designated period to allow a study of the suitability of the river for inclusion in the system and a report to Congress thereon. This withdrawal, however, does not preclude a right-of-way grant which does not involve a conveyance of title or rights leading thereto.

Lower Valley Power & Light, Inc., 29 IBLA 107 (Feb. 23, 1977)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Lands withdrawn for the protection of Alaska Natives' selection rights are not available for oil and gas leasing under the Mineral Leasing Act. 43 U.S.C. § 1621(i) (Supp. III 1973).

James W. Canon et al., 1 SEC. 1 (Apr. 15, 1977)
84 I.D. 176

A withdrawal order is considered to be valid notice of its contents and becomes effective by its filing with the Federal Register, despite any asserted failure to properly note it on the land records.

Rod Knight, 30 IBLA 224 (May 26, 1977)

A description of lands withdrawn by a powersite classification must be interpreted according to its plain meaning when this meaning is consistent with descriptive maps attached to it, with the interpretation of its promulgator, and with the purpose of the classification.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

It is improper for a District Office to find a notice of location for a homesite unacceptable for recordation when the location notice is regular on its face and the land was open to location at the time the notice was filed.

The filing of a notice of location for a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

George T. Beck, 31 IBLA 363 (July 28, 1977)

A mining claim located before Aug. 11, 1955, on land within an existing highway material site withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

Treva L. Berger, 31 IBLA 389 (Aug. 19, 1977)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

The Bureau of Land Management should suspend consideration of the applications under the Carey Act pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

The filing of a notice of location for a headquarters site or a homesite does not create any rights in the land, and the filing of a notice will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right in the claim. Marking of boundaries of the claim does not constitute use and development.

John D. Ketscher, Alfred L. DeCicco, 32 IBLA 235 (Sept. 21, 1977)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio. Where the official records of the Department reflect such proposed withdrawal, a hearing is not required to establish the invalidity of the claim.

Mark W. Boone and John L. Dutra, 33 IBLA 32 (Nov. 25, 1977)

The authority of the Government to proceed wit: the withdrawal of public lands, after a Federal agency has filed an application for such action, which withdraws that land from mineral location, will not be barred by laches because of lapse of time.

Once public land is segregated from mineral entry by notation on the official records of the BLM, objection to the merits of the withdrawal will not vitiate the effect of the withdrawal with respect to the appropriation of the land.

William J. Smith, Sr., et al., 33 IBLA 47 (Nov. 25, 1977)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a State's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

Janelle R. Deeter, Gary D. Deeter, Verna B. Lyons, Harry D. Lyons, 34 IBLA 81 (Feb. 22, 1978)

Joe D. Denson, 43 IBLA 136 (Sept. 28, 1979)

A mining claim or millsite located on land at a time when the land is withdrawn from mineral location is properly declared null and void.

Floyd G. Brown, 35 IBLA 110 (May 15, 1978)

"Subject to valid existing rights." The Secretary of the Interior in making withdrawals "subject to valid existing rights" in PLO 5179 and PLO 5250 intended exceptions to withdrawal to apply in behalf of only those claimants who themselves held such valid rights at time of withdrawal. The Secretary did not intend existence of another's valid rights on withdrawal date to restrain withdrawal so as to allow a topfiling claimant to enter pertinent lands after withdrawal date and independently establish rights under mining laws.

Harry E. Wilson, 35 IBLA 349 (June 19, 1978)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Withdrawal of public lands for the use of a Federal agency is within the discretion of the Secretary. An application for withdrawal conveys no vested right, unlike an entry under the Public Land Laws which entitles the entrant to issuance of patent upon satisfaction of statutory requirements.

The words "withdrawn" and "reserved" are frequently used interchangeably and in conjunction with each other, and cannot be distinguished with separate precise meanings.

Withdrawals and reservations under the authority of the Pickett Act, 43 U.S.C. § 141 *et seq.* (1970), are of a permanent, continuing nature in that they remain in effect until revoked by the President or by Act of Congress.

There is a legal distinction between the administrative segregation of land under application for withdrawal, pending action on the application, and the completed withdrawal itself.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

Objections raised on appeal to the Interior Board of Land Appeals to the merits of withdrawal of public lands in order to protect recreational, historical, and geological values in public lands along the North Platte River, will not vitiate its effect as a bar to the availability of the lands under the desert land laws, as it is not within the Board's function or authority to take the steps necessary to revoke the withdrawal, restore the lands to the operation of the public land laws, and classify it as suitable for disposition as a desert land entry.

Cecilia J. Cain, 36 IBLA 250 (Aug. 15, 1978)

Where a decision rejects an application for an Alaska grazing lease because of an asserted Secretarial policy against granting such applications for land withdrawn pursuant to sec. 17(d)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(d)(2) (Supp. V 1975), but the record on appeal is incomplete with respect to the existence of such policy, the record should be remanded for further documentation.

Kenneth E. Busch, 37 IBLA 346 (Oct. 27, 1978)

The inherent authority of the president to withdraw land from all forms of appropriation under the public land laws, including the mining laws, for the use of the War Department for military purposes was not limited by the Act of June 25, 1910 (the Pickett Act), which was also authority for the withdrawal, but which refers only to temporary withdrawals.

10 U.S.C. § 2669 (1976) authorized the Secretary of a military department to grant an easement for a right-of-way over land permanently withdrawn or reserved for the use of that department and other land under his control. This language was all-inclusive and permitted the Secretary of the Army to issue a revocable permit

for a pipeline over land withdrawn for the use of the Army regardless of whether the withdrawal be permanent or temporary.

Under the procedures in effect prior to the passage of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 43 U.S.C. § 1701 *et seq*. (1977 Supp.), the revocation of a withdrawal or the restoration of withdrawn land to the public domain requires publication of a duly authorized Public Land Order. However, relinquishment of administrative jurisdiction by an administering agency to the BLM does not, in and of itself, result in either a revocation or restoration, and acceptance by BLM of accountability and responsibility is controlled by the procedures outlined in 43 CFR Subpart 2370.

Where, pursuant to 43 CFR Subpart 2370, BLM has assumed administrative jurisdiction over lands formerly within the jurisdiction of another agency, the provisions of 43 CFR 2802.3-2 become applicable, and BLM acquires administrative jurisdiction over any rights-of-way then outstanding.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio in the absence of a showing that the claimants had a valid existing right to the claims which predates the withdrawal. Where claimants assert that they have simply filed amended notices of location of claims which were first located prior to the withdrawal, but the record indicates that the claims are in fact not the same as those located prior to the withdrawal, there is no valid existing right to the new claims, and they are properly declared null and void ab initio.

Riter Ekker, Kerry Ekker, 38 IBLA 277 (Dec. 13, 1978)

Lands or minerals in lands were not "withdrawn" and "restored from a withdrawal" as those terms are used in the public land laws merely because an erroneous title opinion that the minerals are not owned by the United States is corrected to reflect that they are owned by the United States, and the oil and gas simultaneous filing procedures are applicable where those minerals were in a lease which expired before the correction of the status of the minerals was made.

David A. Provinse, 38 IBLA 347 (Dec. 22, 1978)

Without adequate proof of a tender of a notice of location or application to purchase a headquarters site which was wrongfully denied by Bureau of Land Management personnel prior to a withdrawal of the land, the mere occupancy of land prior to the withdrawal did not create a "valid existing right" excepted from the effect of the withdrawal, and an application to purchase a headquarters site filed after the withdrawal is properly rejected.

Rene P. Lamoureux d/b/a Frenchy Lamoureux, 39 IBLA 36 (Jan. 15, 1979)

Oil and gas offers, filed for lands withdrawn by PLO No. 5418, must be rejected. The order was issued under the authority of the Pickett Act, 43 U.S.C. §§ 141-142 (1970), repealed by FLPMA, and the order was not arbitrary, capricious, or an abuse of discretion.

Whether the issuance of PLO No. 5418, prohibiting oil and gas leasing in Alaska, without prior proposed rulemaking is violative of the Administrative Procedure Act or of the Alaska Native Claims Settlement Act need not be decided; by such issuance the Secretary has enunciated a policy of rejecting mineral lease applications well within his discretionary authority.

Bristol Bay Native Corp., 41 IBLA 85 (June 4, 1979)

A Native allotment applicant, who was 5 years old at the time when the land was withdrawn from all forms of appropriation, is properly deemed to be incapable as a matter of law of having exerted independent use and occupancy of the land to the exclusion of others prior to the withdrawal and consequently the allotment application is properly rejected.

Floyd L. Anderson, Sr., 41 IBLA 280 (June 28, 1979)
86 I.D. 345

Peter Pasruk, 43 IBLA 69 (Sept. 19, 1979)

Nicky Nickoli, 43 IBLA 296 (Oct. 17, 1979)

The Board adopts the Solicitor's conclusion that Public Land Order No. 82 (Jan. 22, 1943) (8 FR 1599 (Feb. 8, 1943)) constituted an express retention for the United States of submerged lands when Alaska was admitted to the Union, and title to the submerged lands withdrawn by PLO No. 82 did not pass to the State of Alaska with statehood.

Appeal of State of Alaska, 3 ANCAB 297 (July 31, 1979)
86 I.D. 381

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined as of the date of the withdrawal and through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

United States v. William Lavon Chappell et al., 42 IBLA 74 (Aug. 13, 1979)

Withdrawn lands are not open to appropriation under the Native Allotment Act. Appellant's settlement upon a tract of land withdrawn from entry is a trespass, and such settlement does not provide a basis for any claim to the land.

Publication in the Federal Register of PLO No. 3832 withdrawing certain lands in Alaska from all forms of appropriation under the public land laws, except leasing under the mineral leasing laws, gives valid notice of its contents.

Elizabeth J. Martini, 42 IBLA 82 (Aug. 13, 1979)

An allotment right is personal to one who has fully complied with the law and regulations and an applicant for a Native allotment may not tack on ancestral use and occupancy of the land to establish his right thereto. Ancestral use of the land while open to settlement does not create any right that excepts the land from a withdrawal in favor of an applicant who may have initiated use and occupancy subsequent to the withdrawal.

Sam Hanlon, Sr., 42 IBLA 161 (Aug. 17, 1979)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

A recreation and public purposes classification, issued pursuant to the Recreation Act of 1926, *as amended*, 43 U.S.C. § 869 (1976), segregates Alaskan lands from Native allotment applications until such time as the classification is revoked.

PLO No. 4582, *as amended*, withdraws the land included therein and bars a subsequent Native allotment application.

Under Secretarial Order No. 3040, it is sufficient if the 5 years' use and occupancy, required under the Native Allotment Act, is completed prior to the granting of the allotment, providing applicant either filed for his allotment or commenced use and occupancy prior to the withdrawal.

Betty J. Thompson, 43 IBLA 174 (Sept. 28, 1979)

Although this Department recognizes a fiduciary relationship of the United States to Alaska Natives, this relationship does not authorize the Secretary to ignore the terms of 43 U.S.C. § 270-1 (1970) limiting Native allotments to those lands which are "vacant, unappropriated, and unreserved."

Paul D. Tony, 43 IBLA 245 (Oct. 10, 1979)

AUTHORITY TO MAKE

The Government may withdraw lands occupied by Alaskan Natives under alleged aboriginal possessory rights and thus preclude such lands from disposition under the Native Allotment Act.

Louis P. Simpson et al., 20 IBLA 387 (June 16, 1975)

Since the Bureau of Land Management has no authority to issue a public land order withdrawing land, such authority existing only in the Secretary, the Under Secretary, and the Assistant Secretaries of the Department of the Interior, recommendations by officers of the Bureau of Land Management relating to withdrawals are not subject to review under the provisions of 43 CFR 4.450-2 or 43 CFR 4.410.

City of Kotzebue, 26 IBLA 264 (Aug. 20, 1976)
83 I.D. 313

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, *as amended*, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Harry M. Wilson, 35 IBLA 349 (June 19, 1978)

WITHDRAWALS AND RESERVATIONS--Continued

AUTHORITY TO MAKE--Continued

The inherent authority of the president to withdraw land from all forms of appropriation under the public land laws, including the mining laws, for the use of the War Department for military purposes was not limited by the Act of June 25, 1910 (the Pickett Act), which was also authority for the withdrawal, but which refers only to temporary withdrawals.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

Whether the issuance of PLO No. 5488, prohibiting oil and gas leasing in Alaska, without prior proposed rulemaking is violative of the Administrative Procedure Act or of the Alaska Native Claims Settlement Act need not be decided; by such issuance the Secretary has enunciated a policy of rejecting mineral lease applications well within his discretionary authority.

Bristol Bay Native Corp., 41 IBLA 85 (June 8, 1979)

EFFECT OF

On petition for reconsideration, the assertion of rights to a mining claim under an Aug. 1968 location does not demonstrate error in or require reconsideration of this Board's decision, which affirmed that a mining claim located in 1969 for the same land, after the land was withdrawn from mineral location in Oct. 1968, was null and void ab initio. Neither this Board's decision initially or on petition affects petitioner's rights, if any, under such a prior location.

R. C. Jim Townsend (On Reconsideration), 18 IBLA 407 (Feb. 10, 1975)

Lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (Supp. III 1973), are withdrawn from all forms of appropriation under the public land laws, including, without limitation, the Recreation and Public Purposes Act, *as amended*, 43 U.S.C. §§ 869 to 869-3 (1970), and an application under the latter Act for such withdrawn lands is properly rejected.

Alaska Department of Fish and Game, 20 IBLA 50 (Apr. 23, 1975)

Under the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), a notice of location of a trade and manufacturing site filed after withdrawal of the land is acceptable if it is filed within 90 days of settlement and the settlement occurs prior to a withdrawal of the land. An application to purchase based on such an asserted settlement and filing will be rejected when it is not filed within the statutory life of the asserted claim, but the applicant may be afforded an opportunity to submit a justification for his late filing under the principles of equitable adjudication.

Edwin William Seiler (On Reconsideration), 20 IBLA 221 (May 9, 1975)

Oil and gas lease offers embracing lands withdrawn or reserved for any agency of the Department of Defense may not be granted without the consent of that Department. 43 U.S.C. § 158 (1970). Such lease offers must be rejected where such consent is withheld as inconsistent with the military use, and the offers may not be suspended to await the possible availability of the lands for leasing.

Mobil Oil Corp., 20 IBLA 296 (May 27, 1975)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Seretary of the Interior.

A selection application by the State of Alaska must be rejected with respect to those public lands which are reserved or withdrawn from entry or other form of disposal under the public land laws of the United States and cannot be held open pending a possible future change of the status of the land.

State of Alaska, 20 IBLA 341 (June 11, 1975)

The Color of Title Act, 43 U.S.C. § 1068 (1976), applies only to public land, *i.e.*, vacant, unappropriated, unreserved Federal real property subject to the public land laws. An application under the Act which is based upon color of title initiated when the subject land was withdrawn from the operation of the public land laws and reserved as national forest land must be rejected.

Ben J. Boschetto, 21 IBLA 193 (July 28, 1975)

Frank W. Sharp, 35 IBLA 257 (May 31, 1978)

A trade and manufacturing site location will be defeated where the law has not been substantially complied with before the land is withdrawn under statutory authority.

Elden L. Besse, 21 IBLA 251 (Aug. 11, 1975)

The date of the segregation from settlement, caused by the filing of a State selection application in the appropriate office of the Bureau of Land Management, is not tantamount to the "effective date" of "[a] withdrawal or reservation" described in the Secretarial directive of Oct. 18, 1973. Therefore, Native use and occupancy commenced before such segregation may continue, unhampered by such segregation, to gain the requisite 5 years' use and occupancy required under 43 U.S.C. §§ 270-1 to 270-3 (1970).

Victor A. Anahonak, 21 IBLA 347 (Aug. 18, 1975)

Withdrawn lands are not open to appropriation under the Native Allotment Act. An Alaska Native Allotment application is properly rejected where the applicant fails to show substantial use and occupancy at least potentially to the exclusion of others and not mere intermittent use.

An applicant's opinion that a withdrawal has not served, or does not serve, any useful purpose does not vitiate the effect of the withdrawal to bar appropriation of the land. Likewise, the extended period of time that a withdrawal has been in effect does not vitiate such impact.

Serafina Anelon, 22 IBLA 104 (Sept. 22, 1975)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Where land within a trade and manufacturing site is withdrawn from appropriation prior to its occupancy and use for purposes of trade or manufacture under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, the invalid claim cannot be perfected.

Allan D. Hodge, 22 IBLA 150 (Sept. 30, 1975)

In the absence of a timely appeal from a decision rejecting the State of Alaska's selection application for certain lands, the lands are no longer segregated from other disposition and a withdrawal of those lands may attach, precluding subsequent selection by the State.

State of Alaska, 22 IBLA 229 (Oct. 16, 1975)

A homestead notice of location filed for lands open to location is acceptable for recordation. Where a homestead settler has marked the corners of his claim by posts prior to a withdrawal subject to valid existing rights, the claim survives the withdrawal if the location notice requirements have been satisfied.

Robert A. Rice, Jr., 22 IBLA 291 (Nov. 3, 1975)

Under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq.* (1970), issuance of a grazing lease appropriates the lands and segregates them from public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from lease.

Edward F. Naughton, 23 IBLA 134 (Dec. 23, 1975)

An allotment right is personal to one who has fully complied with the law and the regulations. An applicant for a Native allotment may not tack on use and occupancy of the land by his ancestors to establish the right. The applicant must have completed the 5-year period of use and occupancy prior to withdrawal of the land to qualify.

Sarah F. Lindgren, Emery V. Showalter, 23 IBLA 174 (Dec. 31, 1975)

An Alaska Native allotment applicant may not use the occupancy of public land by forebears to qualify herself for an allotment, nor does the use and occupancy of public land by a forebear, while the land was open to settlement, create any right that excepts the land from a withdrawal in favor of an applicant who initiated independent use and occupancy subsequent to the withdrawal.

Sandra M. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

Myrtle M. Jensen Shanigan, 29 IBLA 255 (Mar. 25, 1977)

Secretarial guideline of Oct. 18, 1973, established that an applicant for an Alaska Native allotment must have completed a 5-year period of substantially continuous use and occupancy prior to withdrawal of the land. This guideline is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970).

Stanley P. McCormick, 23 IBLA 304 (Jan. 16, 1976)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

An allotment right is personal to one who has fully complied with the law and the regulations. An applicant for a Native allotment on land withdrawn from appropriation and reserved for lighthouse purposes by Executive Order, subject to valid existing rights, must have completed the 5-year period of substantially continuous use and occupancy prior to the withdrawal in order to be eligible for an allotment.

Rachael Toopekok, 23 IBLA 314 (Jan. 16, 1976)

A color of title application for land which has been withdrawn for a stock-driveway prior to any conveyance in a color of title applicant's chain of title is properly rejected as to such land.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976)
83 I.D. 23

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2785 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

A notice of location filed under the Alaska settlement law, 43 U.S.C. § 687a (1970), regular on its face, for land which is open to such settlement and location, is acceptable for recordation. If a withdrawal follows the filing of a notice of location, the proper inquiry is into the validity of the claim, *i.e.*, whether the locator has by acts of settlement and improvement established a valid existing right protected from the effect of the withdrawal.

Mary C. Dolan, 24 IBLA 100 (Mar. 1, 1976)

Lands within national parks are not subject to mining location except where specifically authorized by law. 43 CFR 3811.2-2. However, lands within a national forest remain open to location and entry under the mining laws. 16 U.S.C. § 478 (1970). Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of withdrawal for the national park by such a discovery, the land within the claims located in the park would not be excepted from the effect of the withdrawal.

United States v. Wallace W. Vaux, 24 IBLA 289 (Apr. 1, 1976)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Mining claims located on land withdrawn from all forms of entry are null and void from the beginning.

Robert L. Beery et al., 25 IBLA 287 (June 28, 1976)
83 I.D. 249

The filing by a qualified applicant of a homestead application to enter unappropriated surveyed lands in Alaska segregates the land covered by the application from appropriation. Such an application will be considered to have created a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

The filing by a qualified applicant of an application for an allowed homestead entry of land which is open and available to such entry at the time of filing will operate to segregate the land from subsequent appropriation and invest the applicant with sufficient interest therein to preserve the land from the effect of a subsequent withdrawal which is made subject to valid existing rights.

Richard T. Pope, 27 IBLA 33 (Sept. 20, 1976)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio. The finding that appellants have no rights under Sept. 1974 locations does not affect any rights which may have been deeded to them by the holder of a 1952 claim located prior to the time the land was withdrawn from mineral locations.

W. R. and G. B. Strickler, 27 IBLA 267 (Oct. 26, 1976)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

H. A. Todd, A. D. Johnson, 28 IBLA 180 (Dec. 1, 1976)

Sally Lester et al., 31 IBLA 43 (June 21, 1977)

J. R. Nesmith, 38 IBLA 357 (Dec. 22, 1978)

Mining claims located when the land has been withdrawn from all public entry by a first-form reclamation withdrawal are properly declared null and void ab initio. Subsequent restoration of the land to mineral entry does not revive the invalid locations.

Floyd W. McCarty, 28 IBLA 246 (Dec. 20, 1976)

A mining claim is properly declared null and void ab initio to the extent it has been located, prior to the enactment of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. §§ 621-5 (1970), on lands withdrawn from mineral location by a power project classification.

Earl D. Roberts, 28 IBLA 286 (Dec. 27, 1976)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Public land within one-quarter mile of the banks of a river designated by Act of Congress for potential addition to the national wild and scenic rivers system is withdrawn by statute from entry, sale, or other disposition under the public land laws of the United States for a designated period to allow a study of the suitability of the river for inclusion in the system and a report to Congress thereon. This withdrawal, however, does not preclude a right-of-way grant which does not involve a conveyance of title or rights leading thereto.

Lower Valley Power & Light, Inc., 29 IBLA 107 (Feb. 23, 1977)

The notation on public records of the Bureau of Land Management of a request for withdrawal has a segregative effect on land included in a mining location, so that in a contest proceeding, the claimants must show that they had made a discovery of a valuable mineral deposit before the time of posting of the withdrawal application.

United States v. John L. Maley and James F. Pagel, 29 IBLA 201 (Mar. 22, 1977)

Where a mining claim is located on lands at a time when the official records of the Bureau of Land Management showed such lands to be subject to a proposed withdrawal from operation of the mining laws, that mining claim is null and void ab initio.

Jack D. Canon et al., 30 IBLA 112 (May 2, 1977)

Where a homestead entry has been located on land later included within a withdrawal "subject to valid existing rights," the withdrawal attaches to the land within the homestead upon cancellation of the entry. An amendment of a homestead entry cannot include lands within a canceled adjoining entry to which a withdrawal has attached.

Pekka E. Merikallio, 30 IBLA 157 (May 18, 1977)

A mining claim located for a nonmetalliferous mineral on land at a time when such land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

David Budinski et al., 31 IBLA 139 (June 30, 1977)

A powersite classification effects withdrawal of lands to the full extent described therein as of publication in the *Federal Register*, even if the extent of the land withdrawn by it is not accurately entered subsequently on land-status maps, and, notwithstanding this error, lands classified by it are withdrawn under sec. 24 of the Federal Power Act from settlement under the homestead laws, so that a notice of location settlement claim and final proof concerning these lands is properly rejected.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Land reserved for a reservoir site by executive order under authority of the Pickett Act of June 25, 1910, to conserve water for irrigation purposes, remained open to the location of mining claims for metalliferous minerals, and the provisions of the Federal Power Act of June 10, 1920, would not operate to bar the location of such claims unless and until a powersite classification was subsequently imposed.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as by the creation of the North Cascades National Park on Oct. 2, 1968, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Robert A. Bukke (Registered Agent), Valumines, Inc., et al., 32 IBLA 155 (Sept. 12, 1977)

Land is segregated from entry under the mining laws when a proposed withdrawal of the lands from mineral entry is noted on the official records of the Bureau of Land Management and a mining claim located after that time is null and void ab initio.

The segregative effect of an application by a Federal agency for withdrawal of land from mineral entry is not affected by the provision in the published proposal that further hearings and investigations may be held.

Once public land is segregated from mineral entry by notation on the official records of the BLM, objection to the merits of the withdrawal will not vitiate the effect of the withdrawal with respect to the appropriation of the land.

William J. Smith, Sr., et al., 33 IBLA 47 (Nov. 25, 1977)

When land is withdrawn from the operation of the mining laws subject to valid existing rights, such as the Organ Pipe Cactus National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Lewis L. Wetherlin, Gabriele Wetherlin, 33 IBLA 86 (Dec. 8, 1977)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

The purpose of an amended location is to cure imperfections and correct errors, which in the absence of intervening rights relates back to the date of original location. An amended location made while land is withdrawn from mineral entry is ineffectual.

Ray L. Virgin, 33 IBLA 354 (Jan. 18, 1978)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Janelle R. Deeter, Gary R. Deeter, Verna D. Lyons, Harry D. Lyons, 34 IBLA 81 (Feb. 22, 1978)

Victor A. G. Schmidt, 36 IBLA 394 (Sept. 5, 1978)

Joe D. Denson, 43 IBLA 136 (Sept. 28, 1979)

A mining claim located on land in Alaska at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

Where the Bureau of Land Management records reveal that lands in Alaska have been withdrawn under PLO 5250 and certain of those lands have not been recommended, pursuant to sec. 17(d)(2)(C), Alaska Native Claims Settlement Act of Dec. 18, 1971, 43 U.S.C. § 1616(d)(2)(C) (Supp. IV 1974), for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems within 2 years of the date of the Act, such lands do not nevertheless become available for appropriation under the mining laws. This conclusion is compelled by the reason that PLO 5250 is based upon E.O. 10355, which not only invokes 43 U.S.C. §§ 141-142 (1970), but also the President's general or inherent authority to withdraw public lands completely from mining location.

Sally Lester et al. (On Reconsideration), 35 IBLA 61 (May 10, 1978)

Where land on which a valid settlement has been made and maintained according to the law under which it was made, was excepted from the effect of the withdrawal or reservation, occupancy of the land prior to reservation or withdrawal is insufficient to show exception where no filing has been made on the prior occupancy and the prior occupancy was not for homestead purposes.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

A mining claim, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing.

Edward L. Macauley, Martha D. Macauley, 35 IBLA 202 (May 24, 1978)

Federal-American Partners, 37 IBLA 330 (Oct. 26, 1978)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being used for the purpose for which they were withdrawn.

United States v. Milton Wickner, 35 IBLA 240 (May 30, 1978)

"Subject to valid existing rights." The Secretary of the Interior in making withdrawals "subject to valid existing rights" in PLO 5179 and PLO 5250 intended exceptions to withdrawal to apply in behalf of only those claimants who themselves held such valid rights at time of withdrawal. The Secretary did not intend existence of another's valid rights on withdrawal date to restrain withdrawal so as to allow a topfiling claimant to enter pertinent lands after withdrawal date and independently establish rights under mining laws.

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, _as amended_, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 providing that withdrawn lands shall remain open to location for metalliferous minerals.

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

Mining claims located on land withdrawn from such entry are null and void ab initio and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry.

James Messano, 35 IBLA 383 (June 23, 1978)

Mining claims located on lands within a withdrawal which were not open to mineral entry are properly declared null and void ab initio.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

A desert land entry petition-application is properly rejected where the lands applied for therein have been withdrawn by a public land order to protect recreational, historical, and geological values in public lands along the North Platte River.

Cecilia J. Cain, 36 IBLA 250 (Aug. 15, 1978)

A geothermal lease offer filed for lands which are withdrawn for the Department of Defense from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, is properly rejected. Where an offer to lease lands for geothermal resources cannot be accepted because the lands are withdrawn and not available for leasing, the offer will be rejected and may not be held in suspense until the land may become available for such leasing.

Sulphur River Exploration, Inc., 36 IBLA 307 (Aug. 21, 1978)

Where land within a trade and manufacturing site is withdrawn from appropriation prior to cognizable occupancy and use for purposes of trade or manufacture under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, an invalid claim cannot be perfected, and appellant has not shown wherein she is entitled to equitable adjudication under 43 CFR 1871.1.

Sandy Pondy, 37 IBLA 48 (Sept. 18, 1978)

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Upton and William C. Neils, 38 IBLA 90 (Nov. 15, 1978)

Public Land Order 82, issued in 1943, which withdrew from "sale, location, selection, and entry" certain described "public lands" in the Territory of Alaska, could include coastal and inland submerged lands, if such were the intent of the Order.

Where the language of a withdrawal order is unclear as to whether submerged lands were included in the order which withdrew certain lands in the Territory of Alaska from "sale, location, or entry," the withdrawal should be construed to carry out its intent and purpose.

Where the description in the withdrawal order affecting lands in the Territory of Alaska is ambiguous, but can be interpreted to exclude coastal submerged lands, and where other evidence exists which tends to indicate that coastal submerged lands were not intended to be included in the order, the order will be construed to exclude coastal submerged lands.

Where evidence exists that a withdrawal of certain lands in the Territory of Alaska intended to include inland submerged lands, and such submerged lands are not specifically excepted from the withdrawal, the withdrawal will be construed to include inland submerged lands.

Where submerged lands were included in a withdrawal order in Alaska, which was in effect at the time the State entered the Union, even though such submerged lands were not specifically described in the withdrawal order, such submerged lands would not pass to the State at statehood pursuant to sec. 5(a) of the Submerged Lands Act.

The subsequent revocation of a withdrawal of submerged lands which prevented the State from acquiring title to such lands at statehood pursuant to sec. 5(a) of the Submerged Lands Act, has no effect on the ownership of the lands contained in the withdrawal.

Where the coastal submerged lands in the Arctic National Wildlife Refuge were segregated by an application for a withdrawal filed by the Fish and Wildlife Service in Jan. 1958, 1 year before Alaska statehood, such application operated as an express retention of the lands at statehood under the Submerged Lands Act, and prevented passage of title of the coastal submerged lands to the State.

The Effect of Public Land Order 82 on the Ownership of Coastal Submerged Lands in Northern Alaska, M-36911 (Dec. 12, 1978) 86 I.D. 151 (1979)

A mining claim located on land which has been previously withdrawn from location under the mining laws may be properly declared null and void ab initio without a hearing. Such a claim confers no rights on the locator or a subsequent grantee and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry. It is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

Wendell L. Garrett d.b.a. Garrett Industries, 39 IBLA 85 (Jan. 24, 1979)

Lands which are withdrawn from entry remain withdrawn and are not open under the public land laws until there is formal revocation or modification of order of withdrawal and a restoration order opening the lands. Mere passage of time or accomplishment of avowed purpose cannot serve as substitute for formal revocation and restoration.

Erroneous issuance by BLM of oil and gas lease on other withdrawn land in area of tract for which appellant submitted lease offer does not effect restoration to leasing of latter withdrawn tract.

F. M. Tully, 39 IBLA 137 (Jan. 29, 1979)

Portions of mining claims located on lands within a withdrawal and not open to mineral entry are properly declared null and void ab initio.

Barry C. Pipping, 39 IBLA 390 (Feb. 28, 1979)

Lands segregated on the public records by a proposed withdrawal posted Apr. 6, 1973, or a Recreational and Public Purposes Classification filed Nov. 13, 1956, were not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Neither a Recreation and Public Purposes Act classification nor a withdrawal is a rule or regulation within the ambit of the Secretarial policy of Apr. 27, 1971, which provides for utilization of the public participation procedures of 5 U.S.C. § 553 (1976).

Mining claims purportedly located on land not available for such location confer no property right upon the

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

locator, and may be declared null and void ab initio without a hearing under 5 U.S.C. § 554 *et seq*. (1976).

The notation on public records on Apr. 6, 1973, of an application for withdrawal, even though the application did not contain a reference to authority for the withdrawal, as required in 43 CFR 2351.2(b) (1972), was sufficient to temporarily segregate the land under secs. 2091.2-5 (1972) and 2351.3 (1972) from subsequent inclusion in a mining location.

Delmer McLean et al., 40 IBLA 34 (Mar. 15, 1979)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Gerald Byron Bannon, 40 IBLA 162 (Mar. 30, 1979)

Tilden Holloway, Roland Wright, 43 IBLA 134 (Sept. 28, 1979)

Oil and gas offers, filed for lands withdrawn by PLO No. 5418, must be rejected. The order was issued under the authority of the Pickett Act, 43 U.S.C. §§ 141-142 (1970), repealed by FLPMA, and the order was not arbitrary, capricious, or an abuse of discretion.

Bristol Bay Native Corp., 41 IBLA 85 (June 4, 1979)

A Native allotment applicant, who was 5 years old at the time when the land was withdrawn from all forms of appropriation, is properly deemed to be incapable as a matter of law of having exerted independent use and occupancy of the land to the exclusion of others prior to the withdrawal and consequently the allotment application is properly rejected.

Floyd L. Anderson, Sr., 41 IBLA 280 (June 28, 1979)
86 I.D. 345

Peter Pagruk, 43 IBLA 69 (Sept. 19, 1979)

Nicky Nickoli, 43 IBLA 296 (Oct. 17, 1979)

A grazing lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 *et seq*. (1970), appropriates the lands and segregates them from the public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from the lease.

Herman Anderson, Jr., Nicholas Pestrikoff, Anthony Drabek, 41 IBLA 296 (June 29, 1979)

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined as of the date of the withdrawal and through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

United States v. William Lavon Chappell et al., 42 IBLA 74 (Aug. 13, 1979)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Where a trade and manufacturing site is located on land that is withdrawn from appropriation prior to its occupancy and use, an application to purchase is properly denied despite the fact that applicant entered the land as a special use permittee.

Mardelle M. Smith, Sherman C. Smith, 42 IBLA 136 (Aug. 16, 1979)

A recreation and public purposes classification, issued pursuant to the Recreation Act of 1926, *as amended*, 43 U.S.C. § 869 (1976), segregates Alaskan lands from Native allotment applications until such time as the classification is revoked.

PLO No. 4582, *as amended*, withdraws the land included therein and bars a subsequent Native allotment application.

Under Secretarial Order No. 3040, it is sufficient if the 5 years' use and occupancy, required under the Native Allotment Act, is completed prior to the granting of the allotment, providing applicant either filed for his allotment or commenced use and occupancy prior to the withdrawal.

Betty J. Thompson, 43 IBLA 174 (Sept. 28, 1979)

When land is withdrawn from mining location after a mining claim has been located thereon, the claimant must show that discovery of a valuable mineral deposit occurred *prior* to the withdrawal in order to establish rights against the Government.

United States v. Ralph Page et al., 43 IBLA 390 (Oct. 31, 1979)

POWERSITES

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C §§ 621, 623-24 (1970), (2) there are no intervening rights, (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable State statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of sec. 621 *et seq.*, and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

A selection application by the State of Alaska must be rejected with respect to those public lands which are reserved or withdrawn from entry or other form of disposal under the public land laws of the United States and cannot be held open pending a possible future change of the status of the land.

State of Alaska, 20 IBLA 341 (June 11, 1975)

WITHDRAWALS AND RESERVATIONS--Continued

POWERSITES--Continued

Where an applicant for a Native allotment asserts use and occupancy of the land in 1959 and the land is included in an application for powersite withdrawal of the lands in 1963, and is withdrawn in 1965 for such purposes, the applicant has failed to demonstrate the 5 years' use and occupancy prior to the effective date of the withdrawal as required by the Secretarial directive of Oct. 18, 1973. This is based upon the finding that an application for power purposes, upon its filing, immediately withdraws the land pursuant to sec. 24 of the Federal Power Act, *as amended*, 16 U.S.C. § 818 (1970).

Herman Joseph, 21 IBLA 199 (July 30, 1975)

An Alaska Native allotment application is properly rejected where applicant fails to show 5 years' substantially continuous use and occupancy prior to the closing of the land to Native allotments. An allotment application is properly rejected when the land applied for is within a powersite withdrawal and initiation of use and occupancy was less than 5 years prior to the time the lands were closed.

Heirs of Charles E. Frank et al., 21 IBLA 248 (Aug. 11, 1975)

Leah Druck, 22 IBLA 253 (Oct. 22, 1975)

An Alaska Native allotment application is properly rejected where the applicant fails to demonstrate completion of 5 years of substantially continuous use and occupancy prior to an application for withdrawal of the land for power purposes.

Wayne C. Williams, 23 IBLA 88 (Dec. 16, 1975)

A Native allotment may not be approved where the land applied for has been within a powersite withdrawal long prior to the initiation of applicant's use and occupancy.

Davis Hobson, 23 IBLA 159 (Dec. 23, 1975)

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Claims located prior to that date were not resuscitated by the Mining Claims Rights Restoration Act of 1955.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

WITHDRAWALS AND RESERVATIONS--Continued

POWERSITES--Continued

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

A description of lands withdrawn by a powersite classification must be interpreted according to its plain meaning when this meaning is consistent with descriptive maps attached to it, with the interpretation of its promulgator, and with the purpose of the classification.

A powersite classification effects withdrawal of lands to the full extent described therein as of publication in the *Federal Register*, even if the extent of the land withdrawn by it is not accurately entered subsequently on land-status maps, and, notwithstanding this error, lands classified by it are withdrawn under sec. 24 of the Federal Power Act from settlement under the homestead laws, so that a notice of location settlement claim and final proof concerning these lands is properly rejected.

Henry E. Reeves, 31 IBLA 242 (July 18, 1977)

Where prior to 1920 a powersite withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed powersites to all entry, location or disposal. Any mining claim located thereafter on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of Aug. 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

Henry Stagnaro, 31 IBLA 357 (July 25, 1977)

Lands which are covered by a license for a power project issued by the Federal Power Commission are not open to mineral location.

Raymond C. Gardner et al., 34 IBLA 179 (Mar. 14, 1978)

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Urton and William C. Wells, 38 IBLA 90 (Nov. 15, 1978)

Where a mining claim has been located pursuant to the Mining Claims Rights Restoration Act, 30 U.S.C. §§ 621-625 (1970), on land withdrawn for powersite, it is

WITHDRAWALS AND RESERVATIONS--Continued

POWERSITES--Continued

proper to prohibit placer mining if there is a likelihood of substantial interference with the use of the land for fishing, hunting, recreation, and the recovery of archaeological values.

The Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a (1970), does not require the granting of permission for placer mining operations on land within a powersite withdrawal where such operations would probably interfere with other uses of the land.

United States v. Edward J. Connolly, Jr., Idaho Fish and Game Department (Intervenor), 40 IBLA 30 (Mar. 15, 1979)

The withdrawals of lands for powersites under 43 U.S.C. § 141 (1970) do not carry with them reserved water rights for purposes under the administration of the Department of the Interior, simply because of their reservation as a powersite.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

Where an applicant for a Native allotment alleges use and occupancy of lands which had previously been withdrawn in accordance with sec. 24, Federal Water Power Act of June 10, 1920, an application is properly denied despite the fact that a public land order designating the area a powersite classification is issued subsequent to the applicant's commencement of use and occupancy. Lands included in an application for powersite development under the Act shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the United States, unless otherwise directed by the Federal Power Commission or by Congress.

Lindberg Alexander, 41 IBLA 382 (July 23, 1979)

Lands included in an application for powersite development under the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1976), shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the United States, unless otherwise directed by the Federal Power Commission or by Congress.

Charles L. John, 42 IBLA 260 (Aug. 27, 1979)

Settlement upon a tract of land withdrawn from entry is a trespass and provides no basis for any claim to the land under the Alaska Native Allotment Act of May 17, 1906, 34 Stat. 197. Any subsequent revocation or modification of the withdrawal and the restoration of the land to entry will not validate an application for a Native allotment. An application for land withdrawn from entry is nugatory and cannot be given life, even by restoration of land during the pendency of an appeal from its rejection.

Paul D. Tony, 43 IBLA 245 (Oct. 10, 1979)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give

WITHDRAWALS AND RESERVATIONS--Continued

POWERSITES--Continued

life to void claims which had been located on withdrawn lands prior to the date of the Act.

United States v. Elbert Gassaway, 43 IBLA 382 (Oct. 31, 1979)

When land is withdrawn from mining location after a mining claim has been located thereon, the claimant must show that discovery of a valuable mineral deposit occurred prior to the withdrawal in order to establish rights against the Government.

United States v. Ralph Page et al., 43 IBLA 390 (Oct. 31, 1979)

RECLAMATION WITHDRAWALS

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Richard F. Crill et al., 18 IBLA 428 (Feb. 14, 1975)

Clifford Prisbrey, 24 IBLA 108 (Mar. 1, 1976)

Lewis M. Eslick, 24 IBLA 237 (Mar. 24, 1976)

Dallas C. Qualman et al., 36 IBLA 119 (July 25, 1978)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

Mining claims and millsites located upon land which has been previously withdrawn from entry under the mining laws by a first-form reclamation withdrawal are void ab initio. Because Departmental Order No. 2515 delegated authority to revoke such a withdrawal to the Bureau of Reclamation with the concurrence of the Bureau of Land Management, the land remains withdrawn from mining locations when the Bureau of Land Management does not concur with the recommendation of the Bureau of Reclamation to revoke the withdrawal and restore the land to entry.

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the land opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds et al., 25 IBLA 67 (June 1, 1976)
83 I.D. 275

WITHDRAWALS AND RESERVATIONS--Continued

RECLAMATION WITHDRAWALS--Continued

The rejection of an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), to open lands in a reclamation withdrawal to mineral location will be affirmed when the applicant fails to submit facts to show the basis for his knowledge or belief that the lands contain valuable mineral deposits. Merely to state the lands contain such deposits is not sufficient.

Joe Ashburn, 27 IBLA 227 (Oct. 12, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

Where a reclamation withdrawal is revoked as to certain land but that land is not restored to entry, the land remains closed to mineral entry and a mining claim located on it is null and void.

Raymond C. Gardner et al., 34 IBLA 179 (Mar. 14, 1978)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

When land is withdrawn from mining location after a mining claim has been located thereon, the claimant must show that discovery of a valuable mineral deposit occurred *prior* to the withdrawal in order to establish rights against the Government.

United States v. Ralph Page et al., 43 IBLA 390 (Oct. 31, 1979)

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970), (2) there are no intervening rights, (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable State statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of sec. 621 *et seq.*, and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

State of Alaska, 20 IBLA 341 (June 11, 1975)

The Secretary of the Interior is without authority to withdraw or reserve lands or to revoke withdrawals and reservations affecting land under the administrative jurisdiction of any executive department or agency of the Government other than the Department of the Interior without the prior approval or concurrence, so far as the order affects such land, of the head of the department or agency concerned.

Robert D. Hughes, 22 IBLA 121 (Sept. 26, 1975)

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds et al., 25 IBLA 67 (June 1, 1976)
83 I.D. 275

Mining claims are properly declared null and void ab initio when the locations were not perfected by performance of the condition precedent to the opening of withdrawn land to location, entry and patent under the mining laws.

Floyd W. McCarty, 28 IBLA 246 (Dec. 20, 1976)

Where, in the public interest, the Secretary decides not to reopen land to settlement, a would-be settler on this land is denied no rights by this decision.

Henry F. Reeves, 31 IBLA 242 (July 18, 1977)

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION--Continued

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

Where a reclamation withdrawal is revoked as to certain land but that land is not restored to entry, the land remains closed to mineral entry and a mining claim located on it is null and void.

Raymond C. Gardner et al., 34 IBLA 179 (Mar. 14, 1978)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

Under the procedures in effect prior to the passage of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 43 U.S.C. § 1701 et seq. (1977 Supp.), the revocation of a withdrawal or the restoration of withdrawn land to the public domain requires publication of a duly authorized Public Land Order. However, relinquishment of administrative jurisdiction by an administering agency to the BLM does not, in and of itself, result in either a revocation or restoration, and acceptance by BLM of accountability and responsibility is controlled by the procedures outlined in 43 CFR Subpart 2370.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

Regardless of whether lands have been withdrawn from leasing and later restored, or were not withdrawn, an over-the-counter oil and gas lease offer must be rejected where the land involved was formerly embraced in an oil and gas lease which has expired by operation of law and has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112.

David A. Provinse, 38 IBLA 347 (Dec. 22, 1978)

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION--Continued

A mining claim located on land which has been previously withdrawn from location under the mining laws may be properly declared null and void ab initio without a hearing. Such a claim confers no rights on the locator or a subsequent grantee and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry. It is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

Wendell L. Garrett d.b.a. Garrett Industries, 39 IBLA 85 (Jan. 24, 1979)

Lands which are withdrawn from entry remain withdrawn and are not open under the public land laws until there is formal revocation or modification of order of withdrawal and a restoration order opening the lands. Mere passage of time or accomplishment of avowed purpose cannot serve as substitute for formal revocation and restoration.

Erroneous issuance by BLM of oil and gas lease on other withdrawn land in area of tract for which appellant submitted lease offer does not effect restoration to leasing of latter withdrawn tract.

F. M. Tully, 39 IBLA 137 (Jan. 29, 1979)

Settlement upon a tract of land withdrawn from entry is a trespass and provides no basis for any claim to the land under the Alaska Native Allotment Act of May 17, 1906, 34 Stat. 197. Any subsequent revocation or modification of the withdrawal and the restoration of the land to entry will not validate an application for a Native allotment. An application for land withdrawn from entry is nugatory and cannot be given life, even by restoration of land during the pendency of an appeal from its rejection.

Paul D. Tony, 43 IBLA 245 (Oct. 10, 1979)

SPRINGS AND WATERHOLES

Even though springs and waterholes withdrawn from mineral entry by Executive Order No. 107 may not be in use, they nevertheless remain withdrawn so long as they provide sufficient water for public watering purposes.

Robert L. Beery et al., 25 IBLA 287 (June 28, 1976)
83 I.D. 249

Where a waterhole and the surrounding land were withdrawn pursuant to both an Executive Order and an Act of Congress and reserved exclusively for use by the public before the water had been appropriated by others, the Federally reserved water right is superior to and precludes any acquisition of rights to the water by others.

Park Center Water District and The Canon Heights Irrigation and Reservoir Co., 28 IBLA 368 (Feb. 3, 1977)
84 I.D. 87

Executive Order No. 107 of Apr. 17, 1926, withdrew from appropriation all waterholes on public lands, and a purported right to appropriate water from the spring that postdates the withdrawal is without effect.

Broken H. Ranch Co., 33 IBLA 386 (Jan. 26, 1978)

WITHDRAWALS AND RESERVATIONS--Continued

SPRINGS AND WATERHOLES--Continued

Generally

For purposes of the Executive Order of Apr. 17, 1926, the term "spring" means a discrete natural flow of water emerging from the earth at a reasonably distinct location, whether or not such flow constitutes a source of or is tributary to a water course, pond, or other body of surface water. The term "waterhole" means a dip or hole in the earth's surface where surface or groundwater collects and which may serve as a watering place for man or animals.

The Executive Order withdrew, as of Apr. 17, 1926, all lands containing important springs and waterholes that existed as of that date on unappropriated, unreserved public lands.

The Executive Order does not withdraw artifically developed sources of water or manmade structures for collection of water on the public domain. However, any interest held in those artificially developed or constructed sources or structures passes to the United States upon abandonment by the developer or his successor in interest by virtue of the United States' ownership of the land.

The Executive Order withdraws, by operation of law, lands which become of the character contemplated in the Order subsequent to the date of the Order; *i.e.*, vacant, unappropriated, unreserved public lands upon which springs or waterholes come into existence after Apr. 17, 1926.

The Executive Order withdraws all lands containing springs or waterholes as defined and subject to the limitations set forth above, regardless of whether the water source has been the subject of an official finding as to its existence and location.

The priority date for the public right to use the waters of a spring or waterhole withdrawn under the Order is Apr. 17, 1926, for all public springs and waterholes existing on that date. Those public springs and waterholes that naturally come into existence at a later date are withdrawn when they come into existence.

The purposes for which water is reserved under the 1926 Order are (a) stockwatering, (b) human consumption, (c) agriculture and irrigation, including sustaining fish, wildlife and plants as a food and forage source, and (d) flood, soil, fire and erosion control.

Because the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 *et seq.* (1976), repealed both authorizing statutes under which the Apr. 17, 1926, Order was issued, springs and waterholes on the public domain coming into existence after Oct. 21, 1976, are not withdrawn by the Apr. 17, 1926, Order but must be withdrawn under other, still existing legislative authority to be effective.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

Rights-of-Way

Any action taken by private party who did not have a vested State water right prior to Apr. 17, 1926, or had not received appropriate permission from the United States subsequent to that date to make use of the public waterhole or spring withdrawn by the Order is a nullity and of no force and effect. Any entry onto the reserved land for such purpose constitutes a trespass.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

WITHDRAWALS AND RESERVATIONS--Continued

SPRINGS AND WATERHOLES--Continued

State Laws

The Executive Order does not affect a valid, private right to use some or all of the waters of such a source that vested under the applicable State laws, custom or usage prior to Apr. 17, 1926.

The Executive Order withdraws, by operation of law, any vacant, unappropriated, unreserved public land upon which is located a spring or waterhole and for which a private vested right to use all of such water under applicable State law, custom and usage has previously existed upon abandonment or forfeiture of that State water right under the terms of the applicable State law, custom or usage.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

STOCK-DRIVEWAY WITHDRAWALS

An application filed by a State under the Act of Mar. 15, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act of 1894 must be rejected where the lands are withdrawn for stock-driveway purposes, and cannot be suspended pending consideration of a petition for reclassification of the lands as suitable for selection under the Carey Act.

A grant of lands to a State under the Carey Act of 1894 is not a grant *in praesenti*, vesting title to any particular lands as of the time of passage of the Act or by relation back upon fulfillment of the conditions imposed by the Act, but the allowance or rejection of an application by a State under the Act of Mar. 15, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act is a matter wholly within the discretion of the Department; and where the lands sought to be selected by the State are embraced within a stock-driveway withdrawal made by the Secretary of the Interior under authority of law, they are not, so long as such withdrawal remains in force, subject to any claim of the State under the Carey Act.

Idaho Department of Water Resources, 21 IBLA 210 (July 31, 1975)

A color of title application for land which has been withdrawn for a stock-driveway prior to any conveyance in a color of title applicant's chain of title is properly rejected as to such land.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976)
83 I.D. 23

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

Water sources located within stock driveways and reserved pursuant to sec. 10 of the Act of Dec. 29, 1916, 43 U.S.C. § 300 (1970), are reserved to the extent necessary to provide for stockwatering during the process of moving livestock through these reserved access corridors.

Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (June 25, 1979)
86 I.D. 553

TEMPORARY WITHDRAWALS

In the absence of pertinent statutory directives or regulatory criteria mandating such action, it is improper for the Bureau of Land Management to reject applications filed by a State under the Act of Mar. 15, 1910, for temporary withdrawals of lands for proposed development under the Carey Act, on the basis of the Bureau's determination that the Carey Act does not permit acceptance of a temporary withdrawal application: (1) for the establishment of residence and settlement on noncontiguous tracts of land; (2) if the acreage applied for, when added to desert land entry acreage previously patented to the State's Carey Act project proposer, exceeds the maximum 320 acres permitted to be acquired by one person under 43 U.S.C. § 212 (1970); and (3) when the preliminary plan of development submitted by the State fails to provide adequate assurance of water transmission to the proposed project. Under these circumstances, the Bureau should suspend action on the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 24 IBLA 314 (Apr. 20, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed State application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a State under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a State under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

A recreation and public purposes application must be rejected for lands temporarily withdrawn for an irrigation project to benefit Indians. Such a withdrawal is effective until specifically revoked, even though it is made on a temporary basis and has been in effect for more than 50 years.

Elko County Board of County Supervisors, 29 IBLA 220 (Mar. 23, 1977)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act of 1894 must be rejected where the lands have been previously withdrawn for other purposes.

Idaho Department of Water Resources, 32 IBLA 89 (Sept. 2, 1977)

Lands segregated on the public records by a proposed withdrawal posted Apr. 6, 1973, or a Recreational and Public Purposes Classification filed Nov. 13, 1956, were not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Neither a Recreation and Public Purposes Act classification nor a withdrawal is a rule or regulation within the ambit of the Secretarial policy of Apr. 27, 1971, which provides for utilization of the public participation procedures of 5 U.S.C. § 553 (1976).

Mining claims purportedly located on land not available for such location confer no property right upon the locator, and may be declared null and void ab initio without a hearing under 5 U.S.C. § 554 *et seq.* (1976).

The notation on public records on Apr. 6, 1973, of an application for withdrawal, even though the application did not contain a reference to authority for the withdrawal, as required in 43 CFR 2351.2(b) (1972), was sufficient to temporarily segregate the land under secs. 2091.2-5 (1972) and 2351.3 (1972) from subsequent inclusion in a mining location.

Delmer McLean et al., 40 IBLA 34 (Mar. 15, 1979)

WORDS AND PHRASES

"*Agent*." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include an employee who has no discretionary authority and merely acts as the employer's amanuensis in affixing the employer's stamp on a simultaneous oil and gas lease offer entry card, even if it is done outside the actual physical presence of the employer. Any statement required by the Bureau of Land Management to establish the identity of the person who stamped the offeror's name on the card must allow the offeror to provide information to establish whether or not the person was an agent within the meaning of 43 CFR 3102.6-1; merely requiring the offeror to show the stamp was affixed by him or in his presence is not sufficient.

Evelyn Chambers, 27 IBLA 317 (Nov. 4, 1976) 83 I.D. 533

"*Agent*." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include a son who has no discretionary authority and merely acts as his mother's amanuensis in affixing her signature on a simultaneous oil and gas lease offer entry card. Therefore, no further statement is required by the Bureau of Land Management to establish whether or not the son was an agent within the meaning of 43 CFR 3102.6-1.

Rebecca J. Waters, 28 IBLA 381 (Feb. 4, 1977)

"*Agent*." The word "agent," as used in 43 CFR 3102.6-1, requiring statements of authority and disclosure of interests in oil and gas leases by agents, includes all persons or companies having discretionary authority to act on the offeror's behalf concerning the offer or lease.

D. E. Pack, 30 IBLA 166 (May 19, 1977) 84 I.D. 192

"*Amended Location*." An amended location of a mining claim is best defined as one in furtherance of an earlier, valid location, and a subsequent location referring to the same parcel of land, filed by the same party, changing only the name of the claim, will be deemed an amended location.

James C. Haight, 44 IBLA 240 (Dec. 11, 1979)

"*Any other person*." "Any other person" within the context of 43 CFR 4.470 includes one who has standing to protest or appeal a decision of the district manager. An organization which alleges that one or more of its members has been adversely affected by such a decision may be considered "any other person" within the meaning of the regulation.

National Wildlife Federation (Appellant) v. Bolten Ranch, Inc., (Respondent), 24 IBLA 391 (May 3, 1976)

"*Area covered by unit plan*" and "*Lands committed and not committed to unit plan*." When an oil and gas lease is committed to a cooperative or unit plan of development or operation approved by the Secretary, and when such plan unitizes less than all horizons or depths of said lease, the "area covered" by the plan consists only of the unitized depths or horizons and excludes any depths or horizons not unitized. Such a lease necessarily "embraces lands that are in part within and in part outside of the area covered by such plan" and must be "segregated into separate leases as to the lands committed and the lands not committed." "Lands committed" can only refer to all unitized depths or

horizons; "lands not committed" refers to all non-unitized depths. 30 U.S.C. § 226(j) (1970).

Amoco Production Co., 24 IBLA 227 (Mar. 24, 1976)

"*Before and after rule*." In reappraisal of a communication site, the before and after rule is applied by determining the market value of the Government tract including the site at the time of reappraisal, excluding any enhancement to or diminution from the site project, and substracting therefrom the market value of the remaining Government property interest, including enhancement or diminution from the project.

American Telephone and Telegraph Co. et al., 25 IBLA 341 (June 30, 1976)

"*Cancellation*" and "*termination*." The "cancellation" and the "termination" of oil and gas leases are separate, distinct concepts. Cancellation requires a specific act by the Department authorized by various statutes. Termination under 30 U.S.C. § 188(b) (1970) is automatic, occurring by operation of law when the lessee fails to pay his rental timely.

Oil Resources, Inc., 28 IBLA 394 (Feb. 7, 1977)
84 I.D. 91

"*Certified*." Under 43 CFR 1821.3-1(a), additional information submitted by an oil and gas offeror pursuant to a request by BLM need not be in affidavit form. A request for a "certified" copy of an unrecorded document in the possession of its owner connotes the intention that the owner attach an affidavit attesting to its authenticity.

Martha P. Merrill, 44 IBLA 136 (Nov. 30, 1979)

"*Common Clay*." A "common clay" not locatable under the mining laws does not include clay having exceptional qualities which meets refractory and other quality standards for highgrade ceramic products or other products requiring a high refractoriness, or which is useful for certain industrial uses, such as in the oil and oil well drilling industries, outside the manufacture of general clay products. It does include, however, clay usable or used only for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, and for pottery and ordinary earthenware and stoneware. The fact industrial and technological changes may make a certain clay deposit valuable for a given major manufacturer of brick, tile and other clay products, because it meets its peculiar specifications for blends with other raw materials, does not warrant a change from Departmental precedents and a strong Congressional policy establishing that clay usable only for such purposes is a common clay not locatable under the mining laws.

United States v. Thomas J. Peck et al., 29 IBLA 357 (Mar. 31, 1977) 84 I.D. 137

"*Contest*." A decision declaring claims located on withdrawn lands to be null and void ab initio is not a "contest" and regulations under 43 CFR 4.451 *et seq.*, relating to mining contests, have no application.

Delmer McLean et al., 40 IBLA 34 (Mar. 15, 1979)

WORDS AND PHRASES--Continued

"*Date of location*." Date of location of a mining claim is no later than the date on which the claimant certified he had complied with all requirements of law, as indicated by his signature on the notice and certificate of location. The date of recording the location notice of a mining claim in the county records has no bearing on the "date of location" of the claim, from which the 90-day period for recordation in BLM under FLPMA begins.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

"*Date of Location*." Under 43 CFR 3833.0-5(h), for claims located in Nevada, "date of location" is the date indicated in the notice of location or discovery posted on an unpatented mining claim.

Jim Spicer, 42 IBLA 288 (Aug. 27, 1979)

"*Ejusdem generis*." The *ejusdem generis* rule of construction may not be invoked to exclude gravel from the scope of a reservation of "all the coal and other minerals" in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), because this rule of construction can only be effectively applied where there is a series of specific terms which define a class so that one may construe a general term by reference to that class.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)

"*Fair market value*." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

American Telephone and Telegraph Co. et al., 25 IBLA 341 (June 30, 1976)

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

Donald H. Clark, C. Reinhart & Son, Inc., Hartwell Excavating Co., 39 IBLA 182 (Jan. 31, 1979)

"*Final entry*." When an amended homestead final proof has been submitted, the term "final entry" in the proviso in sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, *as amended*, 43 U.S.C. § 1165 (1970) refers to the submission, to the proper officials, of the amended final proof and required fees.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

"*Grazing trespass*." The term "grazing trespass" as used in the context of the Federal Range Code refers to the grazing of livestock on Federal land without an appropriate license or permit or in violation of the terms and conditions of a license or permit, and not to any other special meaning ascribed under other laws and circumstances if inconsistent with this usage.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

WORDS AND PHRASES--Continued

"*Gross value at the point of shipment to market*." The royalty rate for products mined and disposed of under sodium and potassium leases must be imposed on the "gross value of the sodium (or potassium) compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market, and in general, no deductions may be allowed for costs incurred in developing a product to a marketable condition except for the price of reagents which are chemically combined with the product sold from the lease.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

"*Headquarters*." The term "headquarters" as used in the Act of May 14, 1898, *as amended*, 43 U.S.C. § 687a (1970), means the usual place of business, principal office or administrative center used in connection with a trade, manufacture or other productive industry.

David A. Burns, 30 IBLA 359 (June 10, 1977)

"*Highest and best use*." As to the improver of a communication site during the term of his grant, a determination that the highest and best use of property is for communications purposes must be based on evidence showing it is so reasonably likely the site would be chosen for use as a communication site in the absence of improvements made by the improver that the suitability of the land for communications purposes would affect its general market value.

American Telephone and Telegraph Co. et al., 25 IBLA 341 (June 30, 1976)

"*Hold*." Any person or entity which has acquired actual possession and the right thereof to more than 320 acres of desert lands "holds" such acreage within the meaning of the prohibition of sec. 7 of the Act of Mar. 3, 1877, *as amended*.

United States v. G. Patrick Morris et al., 19 IBLA 350 (Apr. 7, 1975)
82 I.D. 146

"*Hold, assignment and otherwise*." Sec. 7 of the Act of Mar. 3, 1891, provides that no person or association of persons shall hold by assignment or otherwise, prior to the issue of patent, more than 320 acres of arid or desert lands; the terms "hold," "assignment" and "otherwise" are words of broad significance and will be defined in such manner to effectuate the purposes of the Act, to wit, to prevent anyone from holding more than 320 acres of desert lands to the exclusion of bona fide settlers or the entrymen of record.

"*Holding*." Any person or association of persons who controls, possesses and receives substantial benefits from desert lands will be regarded as "holding" such lands within the meaning of the Act of Mar. 3, 1891.

United States v. Golden Grigg et al., 19 IBLA 379 (Apr. 7, 1975)
82 I.D. 123

"*Hold by assignment or otherwise*." The purchaser of desert land under an illegal executory contract to convey the land subsequent to patent "holds" that land within the meaning of the acreage limitation of sec. 7 of the Desert Land Act, *as amended*, 43 U.S.C. § 329 (1970).

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

"*Innocent purchaser*." Where the purchaser from the railroad of unpatented land believed at the time of his purchase that the land was mineral, and there was physical evidence of its mineral character, or if conditions were such that the purchaser should have known then that the land was excepted from the grant to the railroad, he was not a purchaser in good faith within the "innocent purchaser" proviso of sec. 321(b) of the Transportation Act of 1940.

Southern Pacific Transportation Co., Jay R. Fogal; Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976)
83 I.D. 1

"*Interest*." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and *not* an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Virginia L. Jones, 34 IBLA 188 (Mar. 21, 1978)

"*Interest*." Where an individual files an oil and gas lease offer drawing entry card through a leasing service under an agreement by which the service is authorized to act as his exclusive representative in the sale of any lease rights obtained by him, and he is required to pay the service a set commission plus a percentage of revenues derived from any retained royalty interests, on any such sale, the leasing service has an enforceable right to share in any profits which may derive or accrue from the lease and, therefore, has an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Harry E. Sist, 36 IBLA 374 (Aug. 31, 1978)

"*Interest*." Where an individual files an oil and gas lease offer drawing entry card through a leasing service under an agreement by which the first $8,000 of the proceeds from any sale of a lease goes to the individual, the next $3,500 goes to the leasing service, and the balance of the proceeds goes to the individual, the leasing service has an enforceable right to a defined share in profits which may derive or accrue from the lease, and, therefore, has an "interest" in the offer as defined in 43 CFR 3100.0-5(b).

Gertrude Galauner, 37 IBLA 266 (Oct. 19, 1978)

"*Interest*." Where a partner in a firm, or business associate, or an officer of a corporation which is engaged in the oil and gas business, files an oil and gas lease offer individually in his own name, the partnership/ corporation/association may have a claim to any benefits accruing to the individual from the lease, owing to the partnership agreement, corporate by-laws, or personal contract, due to the partner's/officer's/associate's fiduciary duty to hold any opportunity obtained individually for the exclusive use and benefit of the firm. This claim is an "interest" under 43 CFR 3100.0-5(b), and failure to disclose it within 15 days of the filing of the offer, as required by 43 CFR 3102.7, subjects the offer to rejection.

Johnnie E. Gryder, 38 IBLA 146 (Dec. 5, 1978)

"*Interest*." Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client, *strictly at the client's option*, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. In such circumstances, the service does not have an "interest" in the lease, so that the client/offeror is not precluded from stating that he is the sole party in interest to the offer, and the filing of offers for the same parcel by other clients of the service is not disqualifying.

Geosearch, Inc., 39 IBLA 49 (Jan. 16, 1979)

Geosearch, Inc., 40 IBLA 267 (Apr. 18, 1979)

Geosearch, Inc., 40 IBLA 401 (May 14, 1979)

"*Interest*." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b). A leasing service, which files a simultaneous noncompetitive oil and gas lease offer drawing entry card on behalf of its client, bound by a "put option" does not have a hidden interest in the offer and does not violate 43 CFR 3102.7 by failing to disclose this put option or 43 CFR 3112.5-2 by filing offers for more than one client on a parcel.

Jack Mask, 41 IBLA 147 (June 18, 1979)

Kelley Everette, 41 IBLA 155 (June 18, 1979)

"*Interest in an oil and gas lease or offer*." If an oil and gas lease offeror in an oral agreement gives another person "a claim or any prospective or future claim to an advantage or benefit from a lease," there would be an interest in the lease or lease offer which must be disclosed under 43 CFR 3102.7. That an offeror might raise a technical legal defense against enforcement of such an agreement in a court does not militate against there being a claim or avoid the consequence of the disclosure regulation or 43 CFR 3112.5-2 prohibiting multiple filing in drawing procedures.

"*Interest in an oil and gas lease or offer*." Where affidavits submitted on appeal by an oil and gas lease offeror disclose that prior to the filing of an oil and gas lease offer the offeror orally agreed to give the person filing the offer for him either the opportunity to refuse to purchase the lease under terms and conditions that a third party would make (right of first refusal), or the opportunity to make the first offer before any other offer would be accepted (first right to buy), the offeror has given the person an interest in the offer as defined in the regulations to include a prospective claim to an advantage or benefit from a lease.

R. J. Enevoldsen, 44 IBLA 70 (Nov. 20, 1979)
86 I.D. 643

"*Justifiable*." For a delay in submission of an oil and gas lease rental payment to be justifiable, lessee must show that the delay would not have occurred except for factors outside of his control.

Reid E. Motley, 43 IBLA 360 (Oct. 29, 1979)

"*Justifiable excuse*." The fact that a courtesy rental notice did not come to oil and gas lessee's attention until 1 day prior to rental due date is not a justifiable excuse for late payment of the rental.

Reid E. Motley, 43 IBLA 360 (Oct. 29, 1979)

"*Known geologic structure*." A known geologic structure is technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive.

Jack J. Bender, 40 IBLA 26 (Mar. 9, 1979)

"*Lands*." The term "lands" can be construed as covering mineral interests constructively severed from the surface estate.

General Crude Oil Co., 19 IBLA 245 (Mar. 28, 1975)

"*Lands not available for leasing*." Under 43 CFR 3110.1-3(a), lands are deemed to be not available for leasing when they are surrounded by lands contained within patents with no oil and gas rights reserved to the United States, when they are segregated from oil and gas leasing by withdrawal, or are embraced within an outstanding lease with an effective issuance date prior to the filing date of the subject offer.

Helen R. Reid, 39 IBLA 378 (Feb. 28, 1979)

"*Leasing Act minerals*." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

"*Lode*" and "*placer*." A placer mining claim has been defined as ground within defined boundaries which contain mineral in its earth, sand, or gravel; ground that includes valuable deposits not in place, that is, not fixed in rock, but which are in a loose state, and may in most cases be collected by washing or amalgamation without milling. Whereas, a lode or vein has been defined as any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock; a body of mineral or mineral bearing rock within defined boundaries.

When mining claims have been located as placer claims for perlite which lies in a "blanket" or "pancake" in an almost horizontal plane and in its original state is encased between two different types of rock, where in places, the upper rock or layer has been eroded away leaving the perlite exposed at the surface and in other places on the claims the upper layer is still present, and the mining of the perlite is characterized as essentially a hard rock operation, and when it is first extracted from the ground and then processed or, in effect, milled to produce a marketable product, the perlite is properly classified as a lode deposit which will not sustain a placer location.

United States v. Estate of Arthur C. W. Bowen (Deceased), and Superior Perlite Mines, Inc. (Contestees), Harborlite Corp. (Intervenor), 38 IBLA 390 (Jan. 8, 1979)

"*Other related products*." "*Other associated deposits*." When sodium or potassium brines are covered by leases conveying the exclusive right to mine and dispose of sodium compounds and other related products or potassium compounds and other associated deposits, the leases convey the exclusive rights to all minerals dissolved in the brine, including lithium.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

"*Otherwise*." As used in sec. 7 of the Act of Mar. 3, 1877, *as amended*, "no person or association of persons shall hold by assignment or otherwise," "otherwise" is not limited to other means equivalent to assignment but rather embraces all mechanisms whereby control of and benefit from an entry or entries are accumulated and transferred.

United States v. G. Patrick Morris et al., 19 IBLA 350 (Apr. 7, 1975)
82 I.D. 146

"*Paying Quantities*." The term "paying quantities," used in the Brady (Deep) Unit Agreement to determine whether or not a participating area of a unit should include additional tracts where the existence of hydrocarbons in paying quantities is disputed, refers to cost of drilling and production plus a reasonable profit.

Amoco Production Co., 41 IBLA 348 (July 11, 1979)

"*Payment*." Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering his leases, and, until such time as it is received, no "payment" of annual rental has occurred. Accordingly, where a check is mailed prior to the due date but does not arrive until more than 20 days after this due date, no "payment" was made prior to that time, so that the lease automatically terminated by operation of law, and the Department is without authority to consider a petition for reinstatement of the lease.

Mobil Oil Corp., 35 IBLA 265 (June 2, 1978)

"*Payment*." A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the due date. A check for rental does not constitute payment until it is received at the proper office.

Gretchen Capital, Ltd., 37 IBLA 392 (Nov. 8, 1978)

"*Person*." A State is a "person" within the meaning of the Department's private contest regulations.

State of Alaska et al., 41 IBLA 315 (July 11, 1979)
86 I.D. 361

"*Person*." Regulation 43 CFR 4.450-1 specifically gives persons with an adverse interest in land a right to contest the adverse claim. It does not depend on the applicability of the due process clause of the Constitution to either claimant. A State is a "person" within the meaning of this private contest regulation.

State of Alaska, 42 IBLA 1 (July 25, 1979)

WORDS AND PHRASES--Continued

"Practical." Under 43 U.S.C. § 1763 (19__), utilization of a nearby existing communication site is practical where the site is suitable and the expense of utilization would not be unreasonable as compared with environmental damage from a proliferation of sites.

Jicarilla Apache Indian Tribe, 29 IBLA 57 (Feb. 16, 1977)

"Production." "Production" as used in all Federal oil and gas leases includes all oil and gas withdrawn from a reservoir.

Response to Feb. 17, 1976, Request from the General Accounting Office: Interpretation of Mineral Leasing Act of 1920, and Outer Continental Shelf Lands Act Royalty Clause, M-36888 (Oct. 4, 1976) 84 I.D. 54

"Production." Oil or gas that is wasted is in a category by itself, distinctly separable from "production," when it is oil or gas that is lost on the surface or in the subsurface through the negligence of the lessee, i.e., without the specific sanction of the supervisor.

Computation of Moneys Due the United States on Oil and Gas Lost as a Result of Pennzoil's Blowout, M-36888 (Supp.) (Jan. 19, 1977) 84 I.D. 64

"Public Land." The term "public land" can only be defined in context, and is not a term of art having specific legal effect. Usually, however, it means the general public domain, unappropriated land; land belonging to the United States and which is subject to sale or other disposal under the general laws, and not reserved or held back for any special governmental or public purpose.

Ben J. Boschetto, 21 IBLA 193 (July 28, 1975)

"Public lands." "Public lands" are defined in sec. 3(e) of the Alaska Native Claims Settlement Act, as follows: "'Public lands' means all Federal lands and interests therein, located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation, and (2) land selections of the State of Alaska which have been patented or tentatively approved under sec. 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to Jan. 17, 1969." The "except" clause contained in the definition of public lands in sec. 3(e) of ANCSA must be read as an expression of Congressional intent not to include particular lands rather than as an "exception" from lands included in the general definition of public lands.

Appeal of Seldovia Native Ass'n, Inc., 1 ANCAB 65 (July 1, 1976) 83 I.D. 461

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978) 85 I.D. 129

WORDS AND PHRASES--Continued

"Public Lands." Land within an interim conveyance to a Native Corporation is no longer "public land" under the Federal Land Policy and Management Act nor subject to Bureau of Land Management jurisdiction to issue rights-of-way under that Act.

New England Fish Co., 42 IBLA 200 (Aug. 22, 1979)

"Reasonable diligence." Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the Bureau of Land Management and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. § 188(c) (1976) because there has been reasonable diligence on the part of lessee.

Lillie Belle Higgins, 38 IBLA 254 (Dec. 8, 1978)

"Reasonable diligence." Allowing 1 day for mail delivery of an oil and gas lease rental demonstrates a lack of reasonable diligence, because reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to allow for normal delays in the collection, transmittal, and delivery of the payment.

Reid E. Motley, 43 IBLA 360 (Oct. 29, 1979)

"Relocation." A relocation of a mining claim is best defined as a location adverse to the prior locations.

James C. Haight, 44 IBLA 240 (Dec. 11, 1979)

"Rentals." Reasonable diligence in sending a rental payment due on the anniversary date includes transmitting the payment so that it will normally be received in the appropriate office on the anniversary date considering the method of transmission, normal delays in handling, and the distance involved.

"Rentals." Failure to pay advance rentals on or before the anniversary date may be justifiable only if the reason for such failure is proximate in time to the anniversary date and may reasonably be considered to be the proximate cause of the failure to submit the payment on time.

M. J. Harvey, Jr., 19 IBLA 230 (Mar. 25, 1975)

"Rural Electrification Administration projects." A right-of-way holder is not excused from payment of rental under 43 CFR 2802.1-7(c), by virtue of holding an REA loan, where such holder is neither a cooperative or nonprofit organization.

Continental Telephone of the West, 35 IBLA 279 (June 2, 1978) 85 I.D. 186

"Segregation." "Segregation" is an administrative procedure preliminary to favorable or unfavorable action on a withdrawal application by the Secretary of the Interior in the exercise of his delegated authority under the Pickett Act, 43 U.S.C. § 141 et seq. (1970), and is not legally equivalent, in its effect on the status of the land, to a completed withdrawal or reservation.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

WORDS AND PHRASES--Continued

"Shall be subject to cancellation." Where a regulation recites that a right-of-way "shall be subject to cancellation" for violation of its terms and conditions, the authorized officer is invested with the discretion to cancel or not, depending upon the circumstances.

State of Alaska, Department of Highways, 20 IBLA 261 82 I.D. 242
(May 19, 1975)

"Signed and fully executed." The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Robert C. Leary et al., 27 IBLA 296 (Oct. 26, 1976)

Arthur S. Watkins, Robert R. Eckerman, 28 IBLA 79
(Nov. 12, 1976)

"Subject to appropriation by him." The provision in 43 CFR 2511.4-2(a) permitting credit for residence and cultivation by a homestead entryman before the date of entry if during that period the land was "subject to appropriation by him" does not refer to land for which there were prior-filed homestead applications which are subsequently withdrawn or rejected. Therefore, until action is taken on prior-filed applications, final proof filed by a junior homestead applicant should not be rejected merely because the land is subject to the prior applications.

John R. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

"Subject to valid existing rights." The Secretary of the Interior in making withdrawals "subject to valid existing rights" in PLO 5179 and PLO 5250 intended exceptions to withdrawal to apply in behalf of only those claimants who themselves held such valid rights at time of withdrawal. The Secretary did not intend existence of another's valid rights on withdrawal date to restrain withdrawal so as to allow a topfiling claimant to enter pertinent lands after withdrawal date and independently establish rights under mining laws.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

"Such permit." "Such permit" as used in sec. 3 of the Taylor Grazing Act, 43 U.S.C. § 315b (1970), providing for a renewal of a grazing permit does not mean only a permit identical with the terms and provisions of the original.

Hat Ranch, Inc., 27 IBLA 340 (Nov. 4, 1976) 83 I.D. 542

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental, within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when he submits payment to the BLM office administering his leases, and when BLM has the opportunity either to receive or decline it. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for reinstatement of an oil and gas lease terminated for failure to make timely payment of annual rental.

Mobil Oil Corp., 35 IBLA 265 (June 2, 1978)

WORDS AND PHRASES--Continued

"Two Consecutive Years." The term "two consecutive years in 43 CFR 4115.2-1(e)(9) means 2 consecutive application years from the date established by a district manager as the deadline for filing grazing applications.

John Hudspeth, 21 IBLA 91 (June 27, 1975)

"Valid Existing Right." An application for modification of a coal lease filed prior to enactment of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C.A. § 203 (Supp. 1977), is insufficient to establish a "valid existing right" excepted from the acreage limit on lease modifications imposed by the amendment.

Nevada Power Co., 36 IBLA 62 (June 30, 1978)

"Well capable of producing oil or gas in paying quantities." The provision in 30 U.S.C. § 226(f) (1976) referring to a well capable of producing oil or gas in paying quantities refers to a well which is actually in physical condition to produce a sufficient quantity of oil or gas to yield a reasonable profit over and above the costs of operating the well and marketing the product. A satisfactory test of a well to establish its capability as of the termination date is necessary. Evidence which only supports inferences is not sufficient, nor is a showing only of a potential prospect for profitable operation at some future time.

American Resources Management Corp., 40 IBLA 195
(Apr. 5, 1979)

"Will be subject to renewal." Where a regulation recites that a mineral lease "will be subject to renewal" under certain circumstances, the authorized officer is vested with the discretion to renew the lease or not, depending upon the circumstances.

Apache Oro Co., 22 IBLA 331 (Nov. 11, 1975)

"Withdrawn" and "reserved." The words "withdrawn" and "reserved" are frequently used interchangeably and in conjunction with each other, and cannot be distinguished with separate precise meanings.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 85 I.D. 229
1978)

"Withdrawn" and "restored from a withdrawal." Lands or minerals in lands were not "withdrawn" and "restored from a withdrawal" as those terms are used in the public land laws merely because an erroneous title opinion that the minerals are not owned by the United States is corrected to reflect that they are owned by the United States, and the oil and gas simultaneous filing procedures are applicable where those minerals were in a lease which expired before the correction of the status of the minerals was made.

David A. Provinse, 38 IBLA 347 (Dec. 22, 1978)

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